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THE
SOLICITORS' JOURNAL

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CURRENT TOPICS

The Mental Health Act, 1959

THE Mental Health Act, 1959, comes into operation in its entirety on 1st November. As we have already published three articles on the provisions of this Act (at 103 SOL. J. 99, 123 and 884) it is not necessary to examine it in detail, but it may be useful to recapitulate some of the main changes which will now take place in the law. An article elsewhere in this issue deals with the new provisions as they affect the estates of patients. The main purpose of the Act is to reorientate the attitude of the law to the mentally sick: the old names "lunatic," "idiot" and "imbecile" are to go, the Board of Control will come to an end, and the element of compulsion in the case of mental patients will be eliminated as far as humanly possible. There will be no certification as at present understood: admissions will be made on the application of the "nearest relative"—a new legal *persona* created by the Act—and there will be no order for admission; no one can be detained for more than 72 hours without written recommendations from two doctors (one a psychiatrist); and any patient will be automatically discharged on an order in writing from his nearest relative, this right of discharge being limited only by the restriction that the responsible medical officer can detain any patient who is likely to be a danger to himself or to others, but even this bar to discharge is subject to an appeal to one of the Mental Health Review Tribunals. These Tribunals, which are to be set up in every Regional Hospital Board Area, will to a large extent take the place of the Board of Control but will have wider powers. They will be presided over by a legally qualified member in every case, and a medical member must be included on every tribunal.

Mental Health and Convicted Offenders

THE most revolutionary changes brought about by the Mental Health Act, 1959, are those relating to criminals. In Pt. V of the Act there are provisions for ordering compulsory admission to hospital or guardianship of a convicted offender where (*a*) the court is satisfied, on the evidence of two medical practitioners, that the offender is suffering from mental illness, psychopathic disorder or subnormality to a degree requiring hospital treatment or guardianship, *and* (*b*) if the court is of the opinion, having regard to the nature of the offence and the offender's antecedents, that such an order is the most suitable method of disposing of the case. It is unnecessary to stress what a leap forward this is in the concepts of penology; whether or not it will prove in practice to be such an advance depends partly on the degree of enlightenment of magistrates and judges, but even more on the

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availability of institutions ready to receive convicted criminals for treatment. This will inevitably be a stumbling-block, for no order can be made under Pt. V unless arrangements have been made to admit the offender to hospital within twenty-eight days—and with the present pressure on beds in mental hospitals, where are these arrangements to be made?

Legal Aid Spreads

THE Minister of Home Affairs in Northern Ireland last week received the report of a committee which has recommended a comprehensive scheme of legal aid and advice. The proposals follow in general the existing legislation in this country but there are one or two departures. The House of Lords would not be excluded and, although slander would not qualify, libel would. Those who are outside the financial limits would be entitled to apply for a loan to finance their litigation at current rates of interest. It appears that efforts were made by the Roman Catholic church to exclude divorce proceedings from the scheme, but the committee has decided that this should be a matter for Parliament to decide. It is encouraging to find that our pioneer work in this field is thought to be worth following by our cousins in Northern Ireland, who do not always admire our social experiments. This month we celebrated the tenth anniversary of the inception of the Legal Aid Scheme, and this month's *Gazette* has marked the occasion worthily. While we must not suppose that our answer is the only one, we have no doubt that the members of the Rushcliffe Committee and successive members of the Council of The Law Society, and in particular of the Legal Aid Committee, are entitled to congratulations for their optimistic vision and the Secretary and staff of the Society for their careful administration.

More Policemen?

THE police have been going through a difficult time but there is at least one hopeful sign. 120 places were recently offered at the Metropolitan Police Training School at Hendon and 1,000 boys aged between 16 and 17½ applied. One-third of the total of those accepted come from grammar schools. It is evident that the prospects offered by careers in the police are brighter than some pessimists suppose, but it is equally clear that the responsibilities which individual police officers carry justify more pay than they receive at present. The object of the school is not to produce an "officer class": presumably the Metropolitan Police are still haunted by Lord Trenchard's ill-fated enterprise in the 1930s, but it is obvious that great stress must be laid on developing qualities of leadership if the senior posts in our police forces are to be adequately filled.

Agricultural Wages

As Martin, B., said in *Reeve* v. *Reeve* (1858), 1 F. & F. 280, "an action cannot be maintained for remuneration merely because it may appear to be reasonable," and a contract to pay wages for work done and accepted will not be implied if there is affirmative evidence that such was not the intention of the parties. In a recent case at Camelford Magistrates' Court it appeared that for fifteen years an agricultural labourer had worked a 63½-hour week and received from his employer only his keep, his clothes, an ounce of tobacco a week and his weekly insurance stamp. While this may well have been a case in which there was affirmative evidence that it was the intention of the parties that no wages should be paid, in the case of farm workers statute has intervened. Under s. 4 of the Agricultural Wages Act, 1948, it is an offence for an employer to fail to pay a worker to whom an order made under s. 3 of that Act applies wages at a rate not less than the minimum rate fixed by the order. In addition to a fine, an employer may be ordered to pay the difference between the amount of wages which ought to have been paid to the worker during the period of two years immediately preceding the date on which the information was laid, and the amount actually paid to him. In the case at Camelford the employer was fined £5 and ordered to pay £652 arrears of wages.

"The Quality of Being Dangerous"

ANY court of summary jurisdiction may take cognisance of any complaint that a dog is dangerous and not kept under proper control and, if it appears that the dog is dangerous, may make an order for the dog to be kept by the owner under proper control or to be destroyed (s. 2 of the Dogs Act, 1871). In a recent case at Reading Magistrates' Court an order was made for a dog to be kept under proper control, but it was argued that the court had to decide whether the dog was dangerous at the time of the hearing, not whether it had been dangerous in the past. Some support for this view may be found in the fact that an isolated act may not be enough to warrant the pronouncement of an order under s. 2 of the Act of 1871 (*MacDonald* v. *Munro* [1951] S.C. (J.) 8), while in *Henderson* v. *McKenzie* (1876), 3 R. 623, the Lord Justice-Clerk said: "The quality of being dangerous relates not to the acts of the dog, but to his nature and disposition." His lordship added that the court must be satisfied that the dog is "savage, ferocious, or dangerous," but it is significant that he conceded that a dog's nature may be shown by the fact that it chases sheep. We agree with the Reading magistrates that attacks upon human beings should be accepted as evidence of a dog's "nature and disposition" and it seems to us that the test "by their fruits ye shall know them" is as applicable to dangerous dogs as it is to false prophets.

Swearing in the Street

IN a recent case at Rochdale, a young man was fined £3 for swearing in the street. There would seem to be three ways in which a person who swears can be brought before the courts. Section 1 of the Profane Oaths Act, 1745, makes it an offence to profanely curse or swear, and the penalty on conviction for a first offence is, for a day labourer or common soldier, sailor or seaman, 1s.; for any other person under the degree of a gentleman, 2s.; and every person of or above the degree of a gentleman, 5s. Under s. 28 of the Town Police Clauses Act, 1847, it is an offence to sing any profane or obscene song or ballad, or use any profane or obscene language, in any street, and a person convicted of such an offence is liable to a penalty not exceeding 40s. or imprisonment for not more than fourteen days. In addition to these offences, in many districts it is an offence, by byelaw, to make use of any indecent language, gesture or conduct, and the amount of the fine imposed leads us to suppose that the prosecution at Rochdale was brought under such a byelaw. In a letter to the court the accused said: "I swear it will never happen again." It is to be hoped that he did not do so profanely lest his confession should have rendered him liable to a further penalty of 1s.—or would it be 2s., or perhaps even 5s.?

THE COURT OF PROTECTION AND THE MENTAL HEALTH ACT, 1959

CERTAIN sections of the Mental Health Act, 1959, relating to the admission of patients to hospital and the provision of local authority services have already been brought into operation by commencement orders but the main body of the Act will take effect from 1st November, 1960.

One of the principal objects of the Act is to carry out the recommendations of the Royal Commission on the Law Relating to Mental Illness and Mental Deficiency, 1954–57, that arrangements for the care and treatment of persons suffering from mental illness should be accompanied as far as possible by no more formalities than for any other form of illness.

Accordingly, the Lunacy and Mental Treatment Acts, 1890–1930, and the Mental Deficiency Acts, 1913–33, are repealed by the new Act and fundamental changes have been made in the law relating to the care of the mentally sick.

Jurisdiction of Court of Protection

The Court of Protection is concerned with the management and administration of the property and affairs of persons who are mentally incapable of doing so themselves. In the past, the court's jurisdiction has to a very large extent been defined by reference to the procedures used for the patient's admission to hospital; for example, a certified patient was *ipso facto* subject to the court's jurisdiction as were various other categories of mental patients. With the repeal of the old Acts and the adoption of the Royal Commission's proposal a new, simplified formula for defining the court's jurisdiction has been found. Section 101 of the Act provides that the functions of the judge appointed to act for the purposes of Pt. VIII of the Act shall be exercisable where, after considering medical evidence, he is satisfied that a person is incapable by reason of mental disorder of managing and administering his property and affairs, such a person being referred to as a patient. Mental disorder is widely defined in s. 4 as "mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of the mind," and the section goes on to define the terms "severe subnormality," "subnormality" and "psychopathic disorder." In future therefore the court when considering whether it has jurisdiction to make an order will no longer be concerned with the circumstances of the patient's admission to hospital, whether he is liable to be detained or is involved in criminal proceedings. What the medical evidence must show is that the person concerned in the proceedings is incapable by reason of mental disorder (as defined in s. 4) of managing and administering his property and affairs.

Powers of the court

Part VIII of the Act, which contains the main provisions relating to the management of the property and affairs of patients (as defined above), provides a statutory code which, without departing in essentials from the existing law and practice, makes a number of changes in detail. The object of this part of the Act is to give the judge (a term which, subject to certain specified exceptions, includes the Master, Deputy Master and Assistant Masters of the Court of Protection) a general power to do anything expedient for the benefit of the patient, his family or for other persons or purposes for whom or which he might be expected to provide (s. 102). Various express powers have also been conferred (s. 103) which in practice are expected to provide for nearly every transaction which it may be desired to carry out on behalf of a patient.

Officers of the court

The various officers of the Court of Protection will continue to act as before but the Master in Lunacy will be known as the Master of the Court of Protection, and the Assistant Master in Lunacy as the Deputy Master of the Court of Protection. The Act gives the Lord Chancellor power to nominate other officers of the court as Assistant Masters to act for the purposes of Pt. VIII of the Act (s. 100 (3)). The extent of their various jurisdictions is laid down in s. 100 (4).

Proceedings and forms

In making applications to the court the proceedings must be entitled as laid down in Form A of Sched. I to the Court of Protection Rules, 1960, which also come into operation on 1st November, 1960. Certain documents must be prepared in accordance with the remaining forms in that Schedule, notably the originating application for first applications, the summons for applications after proceedings have commenced (these two forms replacing the formal application) and the new notice of originating proceedings. The new rules do not, as did the old rules, make the use of printed forms obligatory, but the court, to assist applicants and their solicitors, has completely revised its forms, and new forms designed to meet the changes resulting from the Act and the rules will be available free of charge from the court office, 25 Store Street, London, W.C.1, or from the forms room at the Royal Courts of Justice. In requesting the appropriate forms in connection with an originating application, solicitors will note from r. 38 (1) that, if the patient's property does not exceed £1,000 in value or his income does not exceed £100 a year, the Certificate forms should be used, the former limits having been increased from £700 and £50 respectively.

All proceedings relating to a patient will be commenced by an originating application (printed form C.P.1) which is returnable in not less than seven clear days (except where the property does not exceed £500 in value, when, if no originating application has been issued, the court may make an order in a summary manner), and all subsequent applications for orders will be by summons (printed form C.P.9), returnable in not less than two clear days (rr. 5 and 6).

Interim provision

As in the past, provision is made for urgent directions being given before the general hearing, either by an order appointing a receiver *ad interim* or by a certificate authorising any named person to do any act or carry out any transaction specified (r. 47 (1)). This rule, it will be seen, greatly extends the scope of urgent action by certificate, the court no longer being limited to dealings with cash or securities for the maintenance or other necessary requirements of the patient and his dependants.

Parties and service

The new rules contain detailed provisions with regard to the persons who are to be parties to proceedings in the court and as to service on the patient and other respondents. It is not practicable to go into all the details of these provisions

here, and it will be necessary for the practitioner to study them with care. However, it is thought desirable to draw attention to the new form of notice of originating proceedings (form D in Sched. I to the rules) which must be served on the patient where an originating application is made for the appointment of a receiver or for an order authorising a person to do any act or carry out any transaction on behalf of a patient without appointing him receiver and where the court proposes to make an order with respect to a patient's property in a summary manner under r. 6 (printed form C.P.6 is available for this purpose). It is important to observe that the signature and address of the solicitor acting in the matter must appear at the foot of the notice before it is served and be reproduced in the evidence of service. Such evidence is normally by affidavit but, where the patient is served by a medical practitioner, a certificate of service will suffice (printed form C.P.7, a combined form of affidavit and certificate, is available).

Preservation of interests in a patient's property

Section 123 of the Lunacy Act, 1890, went some way towards protecting the interests of persons entitled to a patient's property on his death in property disposed of under that Act, but the dispositions provided for were limited to those involving a conversion into money. Section 107 of the new Act greatly extends the protection, for by subs. (3) "disposal" means sale, exchange, charging or other dealing with property other than money, the removal of property from one place to another, the application of money in acquiring property or the transfer of money from one account to another. Furthermore, the new section is given retrospective effect on any disposal of property of a person living at the date of the commencement of the Act carried out under the Lunacy Act, 1890.

Transitional provisions

Of more immediate interest are the transitional provisions to be found in Sched. VI to the Act, paras. 24–28, and rr. 103–106, which may be summarised as follows :—

(*a*) All existing orders, directions or authorities made or given in acccordance with the old law and which after the commencement of the Act could have been made or given under Pt. VIII continue to have effect, and the jurisdiction established under the old law continues under the new Act.

(*b*) A committee of the estate becomes a receiver but retains the powers he had as committee, but a committee of the person, while not specifically dealt with in the Act and rules, is deemed to be automatically discharged from his office by the repeal of the Lunacy Act.

(*c*) Existing officially printed forms may continue to be used for the time being but after 1st December, 1960, medical evidence must satisfy the requirements of s. 101 of the Act, although medical evidence filed in support of applications issued before 1st December, 1960, but not disposed of by that date may be accepted as sufficient for conferring jurisdiction if it would have been sufficient for that purpose under the old Acts.

There are a number of other changes of detail in the court's procedure, for example, the form of evidence on the death or recovery of a patient, evidence of value required on dispositions of his property, and in respect of other matters which cannot be dealt with here. The practitioner requiring the details will find it helpful to consult the new edition of Oyez Practice Notes No. 39, "Receivership under the Mental Health Act, 1959," to be published shortly.

H.F.C.
R.W.

John Mackrell Prizemen Series

TRUST BUSTING AND THE FAMILY LAWYER

THE winds of change have recently been blowing in many unusual directions but in few cases have they reached the hurricane force which is apparent when considering the changes in administering family trusts since the war. Twenty-five years ago the prudent solicitor would advise his client, when for instance settling a fund for his daughter on her marriage, to tie up as carefully as possible the interests of the daughter and prospective issue, restrict the powers of investment and make sure that in no circumstance could the husband get his hands on the capital. To-day the situation is entirely different. Hardly any solicitors who started their articles since 1950 will have had the job of drafting such a settlement and going through the motions of agreeing it with the prospective husband's solicitors. If any marriage settlement is contemplated the present policy is to give overriding powers to the trustees to terminate the settlement and pay the settled property to such persons within the marriage consideration as they think fit. The alternative is to take the opportunity of creating a discretionary trust, with the object of not only avoiding estate duty on the settlor's death owing to the exemption of the five-year period on a marriage settlement, but also preventing future estate duty being payable so long as the discretionary trust continues.

Alteration of existing trusts

However, as well as having to be in a position to advise persons when they wish to settle property, whether by will or settlement, as to the tax and estate duty implications, the practitioner must be able to advise them as to the best method of dealing with existing trusts and settlements. The desire to alter such existing trusts has grown greatly as the rates of surtax and estate duty have risen, and it is a solicitor's duty to advise his client how best to mitigate the effect of these impositions. Some solicitors may consider it anti-social so to advise their clients but it is for the client to decide whether he wishes to follow a course which in theory increases the tax burden on his fellow taxpayers. Any solicitor should be prepared to consider all legitimate methods of dealing with trusts and settlements that are of advantage to his clients, and since he has the requisite knowledge the initiative should on many occasions come from him and he should inform the client of possible ways of mitigating his present or future tax burden.

The means of breaking a settlement by terminating a life interest are numerous and perhaps the best list set out is that contained in s. 43 of the Finance Act, 1940, "surrender, assurance, divesting, forfeiture or in any other manner." No

here, and it will be necessary for the practitioner to study them with care. However, it is thought desirable to draw attention to the new form of notice of originating proceedings (form D in Sched. I to the rules) which must be served on the patient where an originating application is made for the appointment of a receiver or for an order authorising a person to do any act or carry out any transaction on behalf of a patient without appointing him receiver and where the court proposes to make an order with respect to a patient's property in a summary manner under r. 6 (printed form C.P.6 is available for this purpose). It is important to observe that the signature and address of the solicitor acting in the matter must appear at the foot of the notice before it is served and be reproduced in the evidence of service. Such evidence is normally by affidavit but, where the patient is served by a medical practitioner, a certificate of service will suffice (printed form C.P.7, a combined form of affidavit and certificate, is available).

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doubt every reader will be aware that this list left out "merger," and great advantage has been taken of this omission to escape the provisions of the above section as amended. However, the most recent amendment (Finance Act, 1958, s. 28) has remedied the defect and it is no longer relatively simple to break a settlement and avoid the five-year rule.

Living off capital

It is the family solicitor's duty to keep in mind the terms of any settlement or trust with which he is concerned and, bearing in mind that it is no longer possible to produce a scheme which will avoid the five-year period, he must be prepared to advise his clients, whether trustees or beneficiaries, well in advance of the likely estate duty implications on the next death. In many cases he may be able to advise a life tenant in the fifties or sixties that he should forthwith give up his interest in settled property for the benefit of his children and be prepared to live off the capital and income of his own free estate. This is producing something of a social change among the more wealthy landed families in this country. Although he may be one of the trustees, the ageing head of the family is no longer the real owner of the family estate. He may have retained a life interest in the family home but the greater part of the estates will now be held by his son and heir, who succeeds to his inheritance at the age of, say, twenty-five but divests himself of it at fifty-five. This method of avoiding duty can go on for generation after generation until one life tenant dies at a comparatively early age, and then the duties will have to be found.

If the life tenant is elderly and unlikely to live for five years, and there is agreement between him and the remaindermen to do what they can to mitigate the death duty burden, it is not so easy to advise as to how to do this. One way is to sell the settlement funds and invest in an agricultural estate, which would reduce the prospective duty by 45 per cent. A solicitor may advise the trustees to think of other possibilities such as timber estates, exempted chattels, or even foreign realty; but as with agricultural estates it will be necessary, unless the powers of investment are very wide, to make sure all beneficiaries are *sui juris* and in agreement with such a course.

Until the Variation of Trusts Act, 1958, there were many occasions when it was not possible to take steps to avoid death duties by breaking a settlement owing to the existence or possibility of interests of infants or unborn beneficiaries. Occasionally the trustees would be prepared to commit a breach of trust but this was perhaps uncommon, and the dangers are obvious, if sometimes overrated. Now a scheme can be prepared which, if it is fair and reasonable to such persons, the court will sanction on their behalf. To avoid any difficulty it is of course advisable to make sure that the terms are not only reasonable for such infants, etc., but are generous.

Surrender of intermediate life interests

An important point to remember when considering any changes in a settlement for the purposes of lessening the future estate duty burden is to arrange for the surrender of any intermediate life interests before dealing with that of the present life tenant. To take an example, John is life tenant of a trust fund which, since he has no children, will go on his death to his brother Peter with a remainder to Peter's children; if nothing is done duty will be payable on John's death and again on Peter's death (if he survives John). If, however, Peter surrenders or even sells his life interest to his children while John is still living and the life tenant, no duty will be payable on the settlement funds on Peter's death even if both he and John die within the five-year period. Hence, if both Peter and John wish to surrender their interests for the benefit of Peter's children, Peter should surrender his interest first and John second so that there will be only one five-year period running rather than two.

Position of free estate

A further consideration when advising on settlements and estate duty is to inquire about the free estate passing on the death. It might be found that a life tenant of a fund not settled by himself and worth, say, £28,000, has also a free estate of £10,500, and the rate of duty on his death will be 24 per cent. and just about one-quarter of the fund will go in duty. If he has two children and they will each share in the settlement funds and the free estate, their expectancy is under £15,000 each. If, however, the life tenant makes a gift of £500 to each of them they not only receive this £500 but their expectancy increases to £16,000, and the total saving of duty in the family is over £3,000. The reason for this is that unsettled property worth under £10,000 is not aggregable with settled property; its rate of duty is therefore 4 per cent. and the rate of duty in respect of the settlement fund is reduced to 18 per cent. Hence, it is advantageous if possible when dealing with a settlement to reduce the unsettled property to less than £10,000.

Conflict of interest

A case where a family solicitor is likely to find that there is a conflict of interest is when he acts for all the members of the family and is also a trustee of a family trust or settlement. Frequently the best method of dealing with a trust fund to ease the tax position is to distribute it amongst those entitled in possession and those apparently entitled in reversion. This can be a technical breach of trust, as there may be a risk of there being interests of persons as yet unborn which could still arise. If the trustee distributes the fund at the request of those *sui juris* he may be running a risk of personal liability and, being a solicitor-trustee who advises his co-trustees, he is liable to indemnify his co-trustees (*Lockhart* v. *Reilly* (1857), 27 L.J. Ch. 54). Since the Variation of Trusts Act, such a solicitor-trustee can always advise that an application to the court should be made to give official sanction to this course, but it is suggested that in many cases, where the fund is a small one, the expense would not justify such an application. The solicitor should have sufficient knowledge of the means of the family to judge whether indemnities given by each person interested and *sui juris* would be a good protection. In many cases the answes would be in the affirmative and such a solicitor should in those circumstances recall that it is said to be a duty of a trustee "to commit judicious breaches of trust."

Conclusion

It can therefore readily be seen that the position of a solicitor to a family is no longer the same as it was a generation or two ago. In any case, but particularly if there are trusts and settlements in the family and the tax liability of members of the family is heavy, it is the family solicitor's duty to have an up-to-date working knowledge of the relevant tax law, and he must be prepared to advise his clients as to possible ways of mitigating their liabilities. People who so advise their clients have been criticised in the past, both by High Court judges and Members of Parliament, but it must be remembered

that the primary duty of the solicitor is to his client, and in pursuance of this duty he must be prepared to give his client advice as to how best to organise his affairs, keeping within the law, so as to pay the least amount of tax or duty. It is then for the client to decide whether to give priority to his own and family financial interests or to those of the State as a whole.

A. J. M. BAKER.

CORONERSHIP TODAY—II

by **Gavin Thurston, M.R.C.P., D.C.H., Barrister-at-Law**
H.M. Coroner, County of London, Western District

THE proceedings at an inquest are concerned solely with identification, registrable particulars, how, when, and where the deceased came by his death and the persons to be charged, if any, in cases of murder, manslaughter or infanticide; the last includes accessories before the fact (Coroners Rules, 1953 (S.I. 1953 No. 205), r. 26). The coroner must inform the jury of the limits of the inquiry, and point out that they are not concerned with determining civil liability (ibid., rr. 27, 33, 34). Rule 34 of the Coroners Rules, 1953, is explicit—

> "The coroner shall not record any rider unless the rider is, in the opinion of the coroner, designed to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held."

Any person at an inquest who, in the coroner's opinion, is a properly interested person, is entitled to examine any witness in person, or by counsel or solicitor. Proper interest is not defined but is usually obvious, e.g., next-of-kin or, in traffic or industrial cases, representatives of deceased, insurance companies, employers, or manufacturers of machinery. In cases of deaths at work there is statutory provision for any person appointed by a trades union to which the deceased belonged at the time of his death to examine witnesses (Factories Act, 1937, Pt. V, s. 67 (2) (*b*); Coroners Rules, 1953 (S.I. 1953 No. 205), r. 16 (2)). This has resulted in attempts to introduce irrelevant matter, needing vigilance by the coroner. There is an increasing tendency for the unions to brief counsel.

Attempts to gain publicity

At times, a relative or connection of the deceased person may abuse his privilege and try to air publicly some spite or personal grievance. This is particularly likely in suicide inquests. The coroner should quickly detect this frame of mind. In suicide cases, the paramour of a deceased person may be very closely involved. If his or her behaviour is likely to be called in question the paramour must be given the opportunity to make explanations. However, deep probing into people's private affairs is seldom warranted, if the factual evidence is satisfactory. Energetic representatives of sectional interests sometimes try to get public hearing at an inquest, and may vociferously object to the coroner's proper refusal of their participation. If an undesirable practice results in death, appropriate steps are for the coroner, and not for unofficial organisations.

The coroner is not required to observe strict rules of evidence at his inquest, but this largely means a useful relaxation of the hearsay rule. In a simple home accident, such as a fall downstairs, the deceased person, who is likely to have been alone at the time, may have told a relative or friend exactly what happened. There can be no sense in excluding such evidence. On the other hand, allegations against others by deceased persons should not be repeated.

Right of refusal to answer incriminating questions

If a criminal charge might arise from the matter the person in jeopardy has an absolute right to refuse to answer questions which tend to incriminate himself. The decision as to whether a question is incriminating is one for the coroner. This situation is common in cases where a death has resulted from possible careless or dangerous driving. Counsel sometimes ask that the jeopardised driver may be excused from giving evidence. This request is not likely to be granted. The witness is, after all, protected by the rule against self-incrimination, and he cannot refuse to answer questions which only show him liable in tort. On the other hand, it is often impossible to ask anything at all of value which is not incriminating. It is worth considering that a simple frank statement by a driver creates a favourable impression and may well stop any further civil or criminal proceedings.

The rules state clearly that documentary evidence shall not be admissible at an inquest unless there is good reason why the maker of the document should not attend (Coroners Rules, 1953 (S.I. 1953 No. 205), r. 28). Occasionally an expert report on, say, a mechanical breakdown has been prepared with a view to civil action. While the coroner would not be likely to exercise his power without good cause, this report would not be privileged from production at an inquest.

Proceedings are inquisitorial

The proceedings at a coroner's court are inquisitorial and examination of witnesses is by the coroner. Interested persons and their representatives may then put further questions to witnesses (ibid., r. 17). No person is allowed to address the coroner or the jury as to the facts (ibid., r. 31). Naturally, counsel or solicitor must put his client's case in a favourable light and, there being no opportunity of addressing the court, there is sometimes a tendency to put words into witnesses' mouths. While this may be unconscious, it needs watching. Matters which do not help to establish the cause of death, but which relate purely to civil liability, must not be introduced; at times the coroner may allow latitude in this direction, but it should not go too far. An infrequent, but undesirable, manœuvre is asking questions in "the public interest" which veil a design to disclose civil liability. In cases where there is clearly no fault on the part of the driver the practice of putting a driver's record to him at the end of his evidence adds nothing to the inquest. A fulsome parade of safety awards and years without accidents may well hurt the feelings of the bereaved relatives.

There are a few points connected with suicide worth mentioning. The inquest is held without a jury, and counsel or solicitors seldom appear. If there is representation it may be that there is some scandal or allegation that the conduct of the deceased person's employers, relatives or associates has driven him to end his life. It is no part of the

coroner's duty to pry into private quarrels except to show that the deceased person was in a certain frame of mind. Unhappy love affairs, feuds at work, housing difficulties, may have a strong bearing, but the coroner is only concerned with the fact of the death and its legal nature.

In many recent studies of suicide, the one point on which all agree is that suicide is an extremely complex and unpredictable action. Evidence is sometimes adduced to say that the deceased man was " not the kind of person to take such a step," or that he professed a particular religious belief. Neither of these, or similar, considerations, has much bearing on a coroner's inquiry and the verdict must follow strictly from the facts.

Suicide note as evidence

A suicide note is a valuable piece of evidence. It will be produced by the person who found it and the handwriting identified by someone able to do so. The note may frequently contain intimate material which can only interest those near to the dead person, and should not be read out in court. It is customary to retain the note for six months as evidence ; copies may be furnished to interested parties immediately. Where the note purports to dispose of property it may be handed to a responsible person ; even though it is not a valid will, the relatives often like to act on its simple instructions.

Evidence bearing on the state of mind is of great importance in suicide. Frequently there is a background of mental disease and this should be recorded carefully. Practice varies, but it seems better to include a finding of mental illness in the body of the inquisition, rather than to add it to the verdict in the form of a rider " while the balance of his mind was disturbed "—a phrase borrowed from the Infanticide Act, 1938.

Effect of suicide on life assurance

The effect of suicide on life assurance depends on the terms of the policy. All offices have a standard form of agreement, and in many there is no restrictive clause at all ; some exclude death from suicide for a stated period, usually about a year. The general attitude of assurance companies is a lenient one ; they still distinguish between " sane " and " insane " suicide, but as the former implies the obsolete coroner's verdict of *felo de se*, the distinction has no practical importance (Thurston, Coroner's Practice, 1956, p. 116).

After the inquest

After the inquest the coroner, and jury, if any, sign the inquisition ; the coroner then transmits a certificate after inquest to the registrar. Certificates of burial, cremation or removal out of England are also completed. A burial certificate may be issued at any time after the coroner has viewed the body, whether or not he has opened an inquest. A cremation certificate may be issued before completion of the inquest in four cases only, where the death appears to be due to a road, railway, flying or industrial accident (Cremation Regulations, 1930 (S.R. & O. 1930 No. 1016), reg. 8 (*d*)). In all other cases, including where a charge is being made under s. 1 of the Road Traffic Act, 1960, cremation may not take place until the coroner's verdict or conclusion of criminal proceedings is reached. This sometimes means retaining a body for three or four months, not a desirable thing, but one which is possible with modern methods of refrigeration.

The coroner can supply copies of his notes of evidence to properly interested persons, and he is entitled to charge a fee for this (Coroners (Fees for Copies) Rules, 1954 (S.I. 1954 No. 1668)). Depositions are only taken in the rare cases where committal for trial on a coroner's inquisition appears probable. The coroner will also release against a receipt exhibits which may be required in other proceedings. With regard to exhibits in general, the coroner will not unreasonably detain valuable or important pieces of apparatus.

Errors in the registrable particulars on the certificate after inquest can be corrected without difficulty. Often it is found that details of Christian names, age and so forth are found incorrect at a later date, often by the discovery of a birth certificate. There is no need to take further formal proceedings in court. Provided the coroner is satisfied by proper evidence on oath that the change is to be a correct one he can notify the registrar that he is satisfied and the registrar will amend his records. This does not apply to changes in the cause of death or verdict, for which the inquisition would have to be quashed (Births and Deaths Registration Act, 1953, s. 29 (4)).

Quashing an inquisition

An inquisition is quashed by order of the High Court, which will direct a fresh inquest, either by the same or another coroner possessing jurisdiction (Coroners Act, 1887, s. 6 (2)). Application to the High Court is granted on the Attorney-General's fiat. The procedure is started by a memorial to the Attorney-General, setting forth the reasons for the application and detailing evidence on which it is based. If the Attorney-General refuses his fiat, which he can do without giving reasons, the matter can be taken no further. Quashing an inquisition is not a common event. Probably less than four applications are made in the average year. The grounds must be substantial and it is necessary to show that a substantial miscarriage of justice has occurred. Minor irregularities in procedure would not be sufficient. It is worth noting that a preponderance of applications are in connection with suicide verdicts, especially in adolescents.

The above points in connection with coroner's law and practice have, admittedly, been arbitrarily selected, but they cover matters which are known to have confused solicitors in actual cases. Coroner's practice is constantly under the review of the Coroners' Society of England and Wales, and there are eleven local societies, covering the whole of the country, which meet from time to time and maintain contact with the parent body.

(Concluded)

MATRIMONIAL PROCEEDINGS (MAGISTRATES' COURTS) ACT, 1960

It has been pointed out by a correspondent that in the article on this Act (p. 712, *ante*) there is a statement which is inaccurate and may be misleading. On p. 714, under " Revocation and Variation of Orders," it is said that s. 8 of the Act makes revocation of a magistrates' court order on resumption of cohabitation discretionary : in fact, the discretion only extends to those parts of the order which concern a third party in relation to a child. On proof of resumption of cohabitation " the court shall revoke the order," with the proviso that the justices have a discretion as to revocation of any provisions of the order committing a child to the custody of a third party or ordering maintenance to be paid to a third party for the benefit of a child.

SOLRS. AND COL.

WHEN I went to America, I was a convinced traditionalist. I considered that our divided Bar worked very well and that, in any event, it was too deeply rooted in history to be abolished or even substantially modified. It was, after all, part of the structure of a legal system of which we were all justly proud.

In America, as everybody knows, there is an integrated Bar. Speaking in the broadest generalisation, anyone who wishes to be "admitted" to the Bar of his State goes to college at the age of eighteen for four years. Having graduated at the end of that time, he spends a further three years at law school. Law school is vaguely analogous to the faculty of law in an English university. After graduating from law school, the aspirant is admitted at about the age of 25. He then spends two or three years as an assistant in a big law firm before commencing to practise on his own account. The lawyer in theory can conduct any case in any of the courts of his State or in those of any other State where he holds a licence (fairly easily obtainable) to practise; or before the Federal courts if he has a similar licence. Thus, in theory, the client has never more than one lawyer who stays with him from beginning to end. Judges are appointed or elected as the case may be from the entire body of the profession; many of them have, indeed, been teachers of the law.

English practice a little odd

In the light of this apparently simple system of legal representation, our English scheme of things began to look a little odd. Our fellow countrymen obtain legal assistance primarily from 19,000 rigorously trained practitioners called solicitors, who are capable of performing most kinds of legal business, including representation in both civil and criminal proceedings before the inferior courts, where the greater part of the country's litigation is transacted. Solicitors are officers of the court, can acquire goodwill and can practise in partnership.

In addition to them, however, there is a small body of gentlemen called barristers. Their training is shorter and less rigorous than that of solicitors. They are not officers of the court and they cannot attract goodwill or practise in partnership. They alone have the right of audience before the higher courts of the land, and from their ranks alone the judges are selected. Thus the solicitor wishing to get representation for his client before the higher tribunals must engage a barrister. If the case warrants yet further representation, a special kind of barrister has to be engaged. He is one who has already had considerable experience and who has been called within the bar of the court, where the solicitors already congregate, and he wears a silk gown identical with the solicitor's gown of stuff. So that in a case of any magnitude the client is represented by no fewer than three lawyers, for all of whose fees he is ultimately responsible.

It is notoriously difficult to make a living as a barrister in the early years and if you do not want to run the risk of starving you become a solicitor. It is still all too easy to starve as a barrister; and yet if you are ambitious this is the only way to preferment. Solicitors must, by and large, be content to remain solicitors. The general public are not allowed to approach the barrister except through the agency of the solicitor. So that the barrister receives all his information about the case at one remove and is, moreover, preserved in the seclusion of his chambers from the dust and heat of the arena.

Viewed from a distance of three thousand miles, the system with all its anomalies seemed a typically English compromise. It was not easy to answer in a few well chosen words the first question invariably put to one by American practitioners: "Tell me, just what is the difference between a barrister and a solicitor?"

Divided Bar in the States

Yet, whatever the American theory, it became apparent that in practice a system comparable with that of the divided Bar existed in the United States, at any rate to the extent that among American lawyers there were those who specialised in trials. In the curious phraseology of the country, it was they and not the judges who "tried cases." They were called "trial lawyers." A large firm of many partners in the bigger cities would include a number of trial lawyers who tried the cases of the firm's clients, the other partners confining themselves to work in chambers. There were trial lawyers who would hire their services to other lawyers who did not specialise in trying cases. In fact, it appeared that those lawyers who by temperament would have become solicitors in England confined themselves to the paper work of the law offices; and those who enjoyed the cut and thrust of the adversary form of trial gravitated towards trial work. But all enjoyed the same status, that of the attorney or counsellor-at-law.

When I returned to England, I found that I was still a traditionalist, but not such a convinced one. Our system of the divided Bar has two obvious advantages. The barrister can take a more objective view of the client's case than the solicitor and this is invariably in the client's interests. The barrister exercises, in fact, a kind of quasi-judicial function from an early stage of the proceedings so that much unnecessary litigation is avoided; and the barrister can specialise to a degree that the solicitor in general practice is unable to achieve. Thus his opinion invariably carries considerable weight and often decides a contentious matter without recourse to the courts.

On the other hand, it seems anomalous that the public should have to pay two, sometimes three, sets of lawyers' fees; that the lawyers who act for them should have undergone different qualifying examinations; that the barrister (unlike the solicitor) should have no right of property in his practice, and that the arduously trained solicitor should have to abandon hope, so long as he remains a solicitor, of attaining judicial office.

The overriding question is whether the public are best served under the present system. Fusion is one of those perennial topics discussed from time to time and then forgotten. In the light of one's American experiences it is questionable whether the public in this country would be any better off as a result of it. Some reforms, however, seem indicated in both branches if men and women of ability are to continue to be attracted by the profession.

In the meantime, my fellow practitioners and myself look back with great pleasure to the happy relationship which existed between the Bar and ourselves during our North American tour. The recollection of it is not the least among the rewards of that experience.

J. F. BROWN.

Personal Note

MR. HOWELL CHARLES BOLTON JONES, solicitor, of Liverpool, was married on 17th September to Miss Sylvia Marjorie Dewar.

MORE GLIMPSES OF AMERICAN LITIGATION

THE most significant difference between the American forensic scene and our own is the survival of the jury in civil cases. "Survival" is too mild a word: the jury system is vigorous and no one I met wanted to abolish or modify it, especially as it appears to be financed at the public expense. Questions of fact and the assessment of damages ought not, the argument runs, to be left to the decision of one man. One result is that damages are on a higher level than with us, so that the full weight of all plaintiffs, actual and potential, is in favour of keeping the jury. Defendants and their insurance companies are less enthusiastic.

I described the system of the contingent fee in my first article: there are some who say that it increases and prolongs litigation in spite of the elaborate machinery designed to encourage settlements, and there is little doubt that juries prolong trials. The upshot is that, for these and possibly other reasons, delays in American courts are substantial. According to Mr. Kenneth B. Hawkins of the Illinois Bar, writing in the *American Bar Association Journal* for August, 1960, there were in March, 1960, over 60,000 civil cases pending in the Circuit and Superior Courts of Cook County, Illinois, with fewer than fifty judges to try them. Even allowing for the fact that Cook County contains Chicago and that many of these 60,000 cases were probably small, the problem is undoubtedly serious and is causing great concern. American courts appear to attach much more importance to precedent than we do and they have a far greater selection of precedents, binding, persuasive and contradictory, than we have. It follows that the preparation of judgments takes longer and this in itself causes delay. I have promised a former judge to show him one of our courts when he comes to England where the judge actually delivers his judgment immediately counsel have made their closing speeches. I hope I am not let down.

I spent an hour or so in a New Jersey court where one of the cases was the approval of an infant settlement. The money was not ordered to be paid into court, although where the amount is substantial it is the practice to require a bond to be entered into. There is no automatic taxation of costs in infant cases, the majority of which are covered by contingent fees. I understand that the infant plaintiff's guardian can complain about the size of the contingent fee. Otherwise the proceedings resembled similar proceedings in this country very closely.

The criminal courts appear to spend more time, trouble and thought on the treatment of offenders even than in this country, where casual observers often express surprise about the elaborate inquiries and investigations which are made. The probation service appears to be strongly manned and in the short time I spent one morning in a superior court in Cleveland I could not see that there was anything more that could be done to deal adequately with offenders. American judges speak of their social obligations more openly than their English and Welsh brethren. It may be that the system of election and appointment has something to do with this. I was particularly struck by the efforts which are made to redeem prostitutes in the New York City Courts, a policy which in this country has received added impetus in recent months from the Street Offences Act.

Committal proceedings in the equivalent of a magistrates' court in New York City are speedy. Evidence can be and is accepted in written form, verified by affidavit, so long as the defendant waives the necessity for calling oral evidence. It follows that the wearisome procedure of copying down statements read out by policemen from their notebooks is avoided. I would not like to see our committal proceedings go quite so fast as those I saw in New York but I believe that, without detriment to the interests of anyone, we could eliminate much of the drudgery.

Next week I hope to give a short description of the arrangements for legal aid in New York City.

P. ASTERLEY JONES.

County Court Letter

WHERE?

THIS is the time of year when little remains to remind one of one's annual holiday except the snapshots and the overdraft. Gay abandon has given way to a feeling that the work-a-day world to which one has returned is just that little bit worse than that from which one went. The work has piled up; the staff is still depleted by late holiday-takers; the evenings, as they insist on saying, are drawing in, and generally there is a feeling of discontent about, which even the prospect of crumpets to come cannot wholly dispel.

The situation is even worse if you are forced to reflect that there were blemishes on the holiday itself. That minor car accident while on tour, for instance, when that silly clot who was also a stranger in those parts grazed your wing and then insisted that it was all your fault; and that stupid hotel manager who messed up your bookings so that you had to go elsewhere for the night even though you had confirmed the reservation from the previous stopping place. Infuriating. You ought to summons them. Tell you what, you will. Serves them both right. Exit to local county court office.

The taking out of a summons, like nearly everything else in the county court, is about as simple a thing as it can be. There is, however, one preliminary snag—has that particular court got jurisdiction? You are likely to be met in both these cases with a polite, we hope, refusal to accept your praecipe, and a suggestion that you should consult Ord. 2 of the County Court Rules, 1936.

All in order

The general rule, as set out in r. 1 (1), is that all proceedings can be begun in the court of the district where the defendant or one of the defendants resides or carries on business, or, subject to the exceptions mentioned later, in the court of the district in which the cause of the action wholly or partly arose. In the case of the clot in the Austin Seven, therefore, your summons would have to be issued either in the court in whose district the accident occurred, or in the town where he lives. If he carried on business elsewhere, you could also sue him there if you knew where it was.

In the case of the hotel, you could, of course, sue in the court in whose district it was situated. You might also sue in the court having jurisdiction where you posted your acceptance of the hotel's offer to accommodate you, as this would be where part of the cause of action arose. If the hotel belonged to a limited company, it might even be that you could sue in the court in whose area it had its principal place of business, if you could discover that. Should it happen to be the City of London, however, this would not be so, since the Mayor's and City Court has no jurisdiction when any substantial part of the cause of action arose outside the city.

Genuine antiques

There are a large and fascinating number of elderly cases on the question of where people " reside " and where they carry on their business. It has, for instance, been decided that the London and North Western Railway carried on business at Euston, and the Great Western Railway at Paddington, but the South Eastern Railway did so—wait for it—at London Bridge. The Aberystwyth Pier Company went one better—it carried on its business in Westminster.

Generally speaking, to " reside " you must have a permanent residence, though if you have none, you " reside," remarkably enough, wherever you happen to be living. Similarly, to " carry on business " you must carry on a permanent business, but not just as somebody's servant, subject to dismissal at a moment's notice. You can, if you wish and are rich enough, both reside and carry on business in a number of places at the same time.

The main exceptions to the general rule that you can elect to start your proceedings where the cause of action wholly or partly arose are contained in r. 1 (3) and (4). The first deals with contracts for sale or hire of goods where payment is to be made by instalments, when you can only do so if the claim is over £20, or if the defendant or some person authorised by him to contract on his behalf (not a servant) was actually in the district of the court when the contract was made. Postal contracts are thus excluded. The second exception is in respect of contracts where the defendant is, or is the wife of, a domestic or outdoor servant or a person engaged in manual labour (shades of the default summons) where again he or she must have been physically present in the area of the court when the contract was made.

Section 12 (1) of the Hire-Purchase Act, 1938, makes a special provision in respect of proceedings under that Act. They must be started in the court in whose area the defendant resides or carries on business or did reside or carry on business at the date of the last payment he made, assuming that he ever got that far. The question of where the cause of action arose is irrelevant.

Special extras

Order 2 of the 1936 Rules continues with a number of rules as to where certain specified actions should be commenced. An assignee should take proceedings where his assignor would have done (r. 1 (2)). Proceedings in respect of land usually have to be begun in the court area where the land is situated, but proceedings for enforcing a charging order obtained under s. 141 of the County Courts Act, 1959, and Ord. 25, r. 7, are taken in the court where the order was made (Ord. 2, r. 2). Rule 6 provides that partnership actions are started in the area where the partnership functioned, and r. 12 that judges and registrars cannot sue or be sued in their own courts (rotten swiz !).

Originating applications and petitions are usually started where the respondent resides or where the subject matter is situated, and appeals in the district where the order appealed against was made (rr. 13, 14 and 15). Should an action be started in the wrong court, the judge can transfer it, order it to continue, or strike it out (Ord. 16, r. 4). Under the County Court (Amendment) Rules, 1960, r. 11 (2), the registrar can do the same since 10th August. But if you start an action in a court more than twenty miles from where the defendant resides or carries on business, he may apply for security for costs (Ord. 13, r. 7).

One way or another, the obvious answer is, sue in the defendant's court wherever practically possible. If, in the case of the clot in the Austin Seven or the dolt in the hotel, that means a return to the haunts of your holiday, what of it ? The break will do you good, and success against either or both may help to give you a slightly less jaundiced feeling about holidays in general and yours in particular.

J. K. H.

"THE SOLICITORS' JOURNAL," 20th OCTOBER, 1860

On the 20th October, 1860, The Solicitors' Journal published an extract from a pamphlet which was a translation of an article on charitable foundations by the French economist Turgot: " It is precisely in the countries where these charitable resources most abound, as in Spain and some parts of Italy, that poverty is more common and more general than anywhere else . . . To cause a considerable number of men to live gratuitously is to institute prizes for idleness and all the disorders which result from it. It is to make the condition of the indolent preferable to that of the industrious; and it is consequently to diminish to the State the quantity of labour and of the productions of the earth of which a part necessarily becomes uncultivated. From hence come frequent famines, an increase in the quantity of misery and depopulation . . . The race of industrious citizens is displaced by a vile populace composed of mendicants without fixed habitations, and given up to all sorts of crimes. To feel the abuse of these ill-applied alms, let us suppose a State so well governed that a poor person is not to be seen in it . . . The establishment of a gratuitous relief for a certain number of men would immediately create poor in that State; that is, it would give a certain number an interest to become poor by abandoning their occupations. From hence would result a void in the labour and wealth of the State, an additional weight of public burthens upon the industrious man . . . It is thus that the purest virtues may mislead those who deliver themselves up without caution to whatever they inspire."

Honours and Appointments

Mr. J. B. Morley has been appointed prosecuting solicitor to Portsmouth Corporation in succession to Mr. Ian Stewart Manson, who has taken up an appointment as assistant solicitor with Birmingham Corporation.

The following appointments are announced by the Colonial Office: Mr. K. S. Few, Resident Magistrate, Kenya, to be Senior Deputy Registrar, Kenya; and Mr. P. R. Jailal, Magistrate, British Guiana, to be Senior Magistrate, British Guiana.

LAW IN A COOL CLIMATE—VIII

SIR LONDON THOMAS, Mr. Bear and Mr. Bull were driving with Sir Ambrose Leeward in the car that was taking them to the airport from which they were about to fly home to England.

Status of solicitors

"I promised," said Sir Ambrose, "that before you left this country I would tell you something about the status of solicitors. I have left this to the last, perhaps because it is the point of which I am most proud.

In Refrigia, to be a solicitor is to be a member of a profession which is greatly honoured. We are not a profession on the defensive, as you sometimes seem to be in England. We are not greatly richer than English solicitors, but I think we are a little better off and we certainly do not have to work at quite such high pressure. One of the reasons is that we have ironed out many of the more mechanical tasks involved in the daily work of an English solicitor. When I was talking to you about the transfer of land, I mentioned that we have no documents worthy of the name of document. On the other hand, a solicitor who has been instructed for a purchaser, when he receives the land certificate, may have to spend a great deal of time simply contemplating all the problems involved. Then he will certainly interview the purchaser at length and will equally certainly walk round the property with him. It may very well be decided that it is desirable to check up on pending developments on adjoining property. There is no secrecy about the land registry and anybody can inspect any registered title. (The price is never mentioned. Why should it be?) The solicitor may write a number of lengthy and intelligent letters, but by and large he is not involved in a great deal of clerical work and his need of clerical assistance is much less than that of an English solicitor. This lightening of clerical work goes through all our legal processes. Accordingly the overheads in a solicitor's office here are much lower than in England.

On the other hand, the public, for example, when buying land, come into much more personal contact with their solicitor and are much more fully aware of the problems he is working out for them and of the expertness or otherwise of the advice he gives. Vendors of land have nothing to do but receive the money so generally they do not employ solicitors at all, but if they do, as when there are mortgages to be paid off or some complication about the division of the proceeds of sale, then the solicitor is paid for the work he actually does, and not upon an ad valorem scale. Because the public are better acquainted with their solicitors and there is no suggestion of solicitors dealing with a mumbo-jumbo which is meaningless to the client, they command much greater respect. This has the effect that their bills are paid with better grace and often the bills are larger.

Above all, we have succeeded in raising the standard of our own profession. I believe you are having great difficulty in England in deciding how the solicitors' profession should be recruited and trained and you will appreciate that we faced very similar problems not more than a generation ago.

Main requisites of a solicitor

We attacked the problems along these lines. What are the main requisites of a solicitor? They are three. First, he must be above average level in intellect and scholarship. Secondly, he must be above average level in common sense. Finally, his moral standards must be of the highest.

You have to be very much more selective in choosing solicitors than in choosing doctors. Doctoring is a matter of professional skill. It is all the better if a doctor has a strong personality so that he can win the confidence of his patients. Nevertheless a doctor of a weak personality may still be able to do a very good job. While it may be regrettable if a doctor's private life and moral standards are not all they might be, so long as he keeps them in the background, he may still be a very good doctor.

A solicitor is quite different. He is a member of a learned profession and he must understand one of the most complex intellectual creations ever produced by man, the ever-changing law. It is not sufficient that he should be extremely clever. I shall come to the question of moral standards in a moment, but, first of all, a solicitor must be a clever man who applies his cleverness with common sense. I am sure you are familiar in England with the brilliant solicitor who is not the slightest use. All his learning may go for nothing if he forgets that his job is to stand between the law and the common man and be able to make the intricacies of the law look simple. The very clever man who delights in the intricacies of the law will get so lost in them that he will fail to serve his client.

On the other hand, common sense alone is not enough. There may have been a time when the law was very much simpler than it is to-day and solicitors spent most of their time dealing with conveyancing and probates; in those days common sense may have been a sufficient guide even when accompanied by very little learning. The law, in Refrigia as in England, has grown so much greater in volume and so much more complex in character, that common sense by itself is no longer sufficient unless it is accompanied by the high level of intellect that is required to grasp the law before common sense can take over the process of interpreting it to the client. To find men with both these faculties is very difficult, but it is even more difficult to find men who also possess the third faculty, which I will go so far as to call the most important of all.

A solicitor must be honest in his bone, his flesh and his sinew. Honesty and rectitude must be so natural to him that the temptation to be dishonest will not even occur. I know that in England your attention is much focused on the problem of financial defalcation. That is of course a very serious matter and your profession will not command the respect it deserves until defalcation has not merely been minimised or compensated but has been absolutely stamped out. Honesty goes much further than that. Honesty affects the relationship of a solicitor with his own client in every single matter and also his relationship with other clients and with other solicitors. Even if solicitors never handled money, honesty would still be the prime requisite of the profession.

The trouble is, how are men of this stamp to be recognised? I know that in England you conduct some rather playful interviews with very little effect, but in the main you are content to accept as a solicitor any young man who can find a practising solicitor willing to take him into articles for five years and who during that period is able to pass three examinations. I admire the many steps you have taken in recent years to improve the preparation for those examinations and the nature of the examinations themselves. The unfortunate fact is that you have no system which weeds out the man who is clever but lacks common sense and absolutely no system at all designed to eliminate the man who is not

fundamentally honest. I know of course that, before a newly qualified man can be admitted, his former principal has to certify that he is in all respects a fit and proper person to be a solicitor. That is as it should be, but does it do what is necessary? It may do some good. It may prevent a few duds being admitted, but does it ensure that only thoroughly honest men are allowed to join your ranks? I shall not answer the question because it might be unkind and I am still your host.

How do we do it?

First of all, far more young men want to be solicitors in Refrigia than in England because the remuneration is better, the life is better, and the respect received from the general public bears no comparison. Secondly, we dispose of the question of cleverness right at the start. Nobody can even enter into articles unless he has entered a university and obtained a law degree. These examinations cover all the usual subjects required by an English solicitor.

Articled clerks substantially paid

Thirdly, immediately on entry into articles the articled clerk is paid a substantial salary. This is increased every year and by the end of his third year he will be earning as much as a newly admitted solicitor in England. He is still not a solicitor because his articles (despite his three years at the university before he began them) last five years, making eight years of training in all. During this time he is not distracted by attendance at law school and taking examinations. His five years consist of solid office work. Every five months, he leaves his principal's office and spends one month with another firm of solicitors, a different firm every time. Each firm submits a confidential report to our Law Society relating to the clerk's common sense and honesty. The earlier reports are extremely important because he must be warned at an early stage if he is not likely to make the grade. If he seems unlikely to make a solicitor, he may be advised to become a barrister instead. At any time he can make his own choice to switch to being a barrister. Equally he can drop out of the law altogether if he prefers to do so. Only when the young man has completed five years and received ten satisfactory reports from ten different firms on his common sense and honesty is he accepted as a solicitor. It is a long time to wait but he has been earning for five years and has had the advantage of acquiring all his academic knowledge at the start before he began to acquire office experience.

When you remember also that no solicitor in Refrigia is allowed to practise except in partnership and that no solicitor may become a partner in any firm until five years after he has been admitted, you may appreciate the reasons why the prestige of solicitors in Refrigia is high and defalcations are unknown.

Exit

Just over there, I think I see your Comet waiting."

As the four men moved over to the aircraft Sir London Thomas took Sir Ambrose aside. "There's one important question——" he was beginning, when an air hostess interrupted him. "*Please* hurry, gentlemen," she said. "You're very late already."

Sir Ambrose stepped back. "Goodbye, goodbye!" he called. "Pleasant trip!"

Sir London took a pace towards him. "But I really must——" The air hostess turned on him. "You can't keep the machine waiting, you know, sir."

"Oh, very well." Sir London allowed himself to be bundled into the Comet. As they took their seats Mr. Bull looked at him curiously. "What was it you wanted to know?" he inquired.

"Oh, it doesn't matter really, I suppose," replied Sir London. He sighed. "I was only going to ask him about their immigration laws," he said.

(Concluded) E. A. W.

Landlord and Tenant Notebook

REPUDIATION

For many years, a large proportion of decisions in landlord and tenant cases has dealt with the attempts of landlords—mostly frustrated—to recover possession. But it is not only because it "makes a change" that I propose to discuss a case, *Woodall* v. *Robb* (1960), 175 E.G. 589 (C.A.), in which a landlord desired to hold, and succeeded in holding, a tenant to his bargain.

The plaintiff had let the defendant a furnished flat, the term being 15th April, 1958, to 16th October, 1960. On a date in November (either the 12th or the 13th) an altercation took place between the plaintiff of the one part and the defendant and his wife of the other part; it had something to do with a cleaner. At the conclusion of the altercation, the plaintiff said: "You must leave the flat." The defendant and his wife saw the managing agents next day and asked for another flat. On 27th November, they wrote to the plaintiff saying that they would be moving out on 20th December. Which they did.

The action was brought in the county court, the plaintiff claiming rent (£250 5s. 0d., of which £10 0s. 3d. was admitted) and a declaration that the tenancy existed; and the county court judge decided in favour of the defendant on the ground or grounds that the plaintiff had repudiated the tenancy and that the repudiation had been accepted.

No repudiation

The Court of Appeal reversed this decision, and the *ratio decidendi* may be said to have been indicated by Lord Goddard in observations made before his colleagues Upjohn, L.J., and Diplock, J., delivered their judgments. The observations were: "If a landlord, having lost his temper, says, after a row: 'You have to get out' that is not a repudiation" and "You cannot repudiate a lease—it may be surrendered."

Upjohn, L.J., said in his judgment that "You must go" was not an agreement to accept a surrender, and observed that the defendant had chosen an "arbitrary date"; Diplock, J., said that repudiation did not apply to leases.

The last mentioned statement fitted the facts before the court; but it may be observed that there have been occasions on which a *tenant* has been held to be entitled to repudiate a tenancy. The implied undertaking, in the case of premises let furnished, is such that if they are not fit for habitation

the tenant may repudiate the tenancy: *Wilson* v. *Finch-Hatton* (1877), 2 Ex.D. 336 (a defective drains case). The same applies when the statutory condition of fitness (now Housing Act, 1957, s. 6) is broken: *Walker* v. *Hobbs & Co.* (1889), 23 Q.B.D. 458 (decided under the Housing of the Working Classes Act, 1885).

Surrender

The references to surrender made by both Lord Goddard and Upjohn, L.J., suggest that there was some idea of approaching the question as a problem of surrender by operation of law. It may have been considered that what the learned county court judge meant when he spoke of "acceptance" of a repudiation was that there had been an agreement to surrender which had been acted upon, albeit somewhat tardily. This may have led Lord Goddard to observe that a tenancy might be surrendered, and Upjohn, L.J., to hold that what the plaintiff had said was not an agreement to surrender—not, it may be noted, that it was not an offer to accept a surrender.

Be that as it may, it was clear that the facts fell short of what would be required. There must, as was held in *Re Panther Lead Co.* [1896] 1 Ch. 978, be an *agreement* by landlord and tenant that the term shall be put an end to, *acted upon* by the tenant quitting and the landlord, by some unequivocal act, *taking possession.*

Estoppel

It is true that such a surrender may be effected unintentionally where the owner of a particular estate, as was held in *Lyon* v. *Reed* (1844), 13 M. & W. 285, has been party to some act, the validity of which he is by law afterwards estopped from disputing, and which would not be valid if his particular estate continued to exist. It may be that Lord Goddard's example of a landlord who has lost his temper would be relevant if an attempt were made to uphold the county court judgment as justified by the doctrine of estoppel: the plaintiff was, it might be suggested, trying to have it both ways. But she had apparently been careful not to resume possession of the flat when the defendant did leave; and even putting up a "to let" bill has been held not to prevent a landlord from recovering rent as she did: *Redpath* v. *Roberts* (1800), 3 Esp. 225.

Eviction

The idea of pleading "eviction" may have occurred to the defendant and though, in general, there must be something like physical expulsion—and a mere trespass will not amount to eviction (*Henderson* v. *Mears* (1859), 1 F. & F. 636) as well as an intention to put an end to the tenancy—(*Newby* v. *Sharpe* (1878), 8 Ch.D. 39), there are decisions showing that, at all events in the case of furnished lodgings, conduct short of re-entry may suffice. In *Kirkman* v. *Jervis* (1839), 7 Dowl. 678, the landlord's behaviour justifying abrupt departure was held to amount to an eviction; and failure to remedy a nuisance which made occupation uncomfortable was likewise so held in *Cowie* v. *Goodwin* (1840), 9 Car. & P. 378—and in this case there was no abrupt departure, the tenant not quitting till he had found alternative accommodation. But "You must leave the flat" spoken in anger could hardly satisfy the requirement.

R. B.

HERE AND THERE

MIXED EPOCHS

ANGRY or earnest young men have already taken to adjuring us to "live in the nineteen-sixties," to adjust all our hopes and habits to thoughts of nuclear fission and electronic computers and space-ships and interstellar travel and to abandon all other thoughts but these. But human life is not like that. Time is not a magic lantern show in which you change the picture on the screen with a sharp click and put the slide before back in the box. Each age is a composite picture of the centuries that have gone before. This very year I saw a stage-coach in the Strand, complete with guard and horn, and only yesterday in Sussex I was in a shop which not so long ago one would have called an ironmonger's but, judging by the utensils displayed, should now be called a plasticmonger's, and the owner was congratulating himself on his good fortune in having just acquired from a traveller a dozen brand-new horse brasses. There's life in the old horse still, but, all the same, I always find the mounted police something of an enigma. No doubt *en masse* this sombre civic cavalry fulfils in times of civil commotion the function formerly fulfilled on the battlefield by their military counterparts; in the words of the Victorian subaltern, "they give tone to what would otherwise be a mere vulgar brawl." The mounted police no doubt bring out the better feelings of any rioting British crowd by recalling their love of animals and conjuring up memories of happy days on Epsom Downs. On a job like that the horse has the internal combustion engine beaten every time, psychologically.

SOLITARY CAVALIER

But what of the solitary mounted policeman whom one encounters not infrequently in the most incongruously traffic-jammed streets? What trouble is he looking for? High in the saddle he can perhaps detect suspected bad characters lurking on the top decks of crowded buses where no pedestrian constable could recognise them. Without a search warrant he can observe illegal activities through first floor windows more easily than detectives disguised as window-cleaners. In the neighbourhood of Regent's Park he would be better equipped than, say, a motor-cycle policeman to detect and pursue an animal escaping from the Zoo. Perhaps in the recent case of the elephant which made law by being parked beside one of the new parking-meters it would have been fitting that a mounted policeman should have dealt with the matter. But I have never actually seen one of these solitary cavaliers in action.

THE VERY JOB

A recent prosecution at the Lambeth magistrate's court, however, demonstrates just the sort of case in which a mounted policeman's intervention is artistically precisely right, admirably appropriate. He arrested a bearded labourer on a charge of riding his bicycle in the wrong direction in a restricted street. The newspaper report does not specify what was the character of the bicycle, but one would like to believe that it was a "penny-farthing" or at least an old solid-tyred "bone-shaker." This would not only make the episode of the arrest more vividly picturesque as a period piece. It would also fit in more appropriately with the

defence put forward by the accused. " Under the Magna Carta," he said, " there is no such thing as a restricted street." What a light of other days breaks on the mind to hear Magna Carta invoked once more by a British citizen. All through Queen Victoria's reign the proud free Briton wielded it like a club, a knockdown argument against the encroachment of any tyranny. But between " the New Despotism " of bureaucracy and " the Welfare State " it was been long forgotten. And now all of a sudden out it comes again. Even the idea of a " penny-farthing " bicycle seems absurdly modern in such a context. The defendant, bearded as a peasant of King John's time, must have seen the mounted constable bearing down on him as if he were a member of the tyrant king's feudal cavalry. " You have no right to deal with me," he told the magistrate. " I have the right to be tried by a judge and jury. Under the rights of Magna Carta a man is entitled to free speech and free access to every highway." The case has a moral: Don't be afraid of citing Magna Carta. The charges against the defendant were dismissed.

RICHARD ROE.

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Aberdeen-Huntly-Fochabers Trunk Road (Cairnie Diversion) (Variation) Order, 1960. (S.I. 1960 No. 1813 (S.93).) 5d.

Ayr County Council (Surge Burn and King's Burn) Water Order, 1960. (S.I. 1960 No. 1804 (S.91).) 5d.

Building Societies (Accounts) Regulations, 1960. (S.I. 1960 No. 1826.) 6d.

Building Societies (Annual Return and Auditors' Report) Regulations, 1960. (S.I. 1960 No. 1827.) 11d.

County Court (Amendment) (No. 2) Rules, 1960. (S.I. 1960 No. 1837 (L.17).) 4d.

Rules 2 and 4 of these Rules make drafting amendments to the County Court Rules. Rule 3 revokes Ord. 46, r. 3, of the County Court Rules, which deals with proceedings under the Charitable Trusts (Recovery) Act, 1891, in consequence of the repeal of that Act by the Charities Act, 1960.

Factories (Fire Certificate Application) Order, 1960. (S.I. 1960 No. 1840.) 5d.

This Order prescribes the form of application to the fire authority for a certificate under s. 34 of the Factories Act, 1937, that premises are provided with such means of escape in case of fire for the persons employed in the factory as may reasonably be required in the circumstances of the case.

Factories Act, 1959 (Commencement No. 4) Order, 1960. (S.I. 1960 No. 1839 (C.17).) 4d.

London Traffic (Prohibition of Waiting) (Amersham) Regulations, 1960. (S.I. 1960 No. 1824.) 5d.

North of Birmingham—Preston By-Pass Special Road (Variation No. 2) Scheme, 1960. (S.I. 1960 No. 1832.) 5d.

Perth County Council (Pitcairnie Lake, Dupplin) Water Order, 1960. (S.I. 1960 No. 1812 (S.92).) 5d.

Rate Limitation (Increase) (Camperdown Estate, Dundee) Order, 1960. (S.I. 1960 No. 1814 (S.94).) 4d.

Stopping up of Highways Orders, 1960:—

City and County Borough of Bradford (No. 7). (S.I. 1960 No. 1805.) 5d.

City and County of Bristol (No. 7). (S.I. 1960 No. 1818.) 5d.

County of Cambridge (No. 5). (S.I. 1960 No. 1833.) 5d.

County of Chester (No. 17). (S.I. 1960 No. 1830.) 5d.

County of Chester (No. 18). (S.I. 1960 No. 1831.) 5d.

County of Denbigh (No. 3). (S.I. 1960 No. 1834.) 5d.

County of Derby (No. 15). (S.I. 1960 No. 1819.) 5d.

City and County Borough of Liverpool (No. 14). (S.I. 1960 No. 1821.) 5d.

City and County Borough of Liverpool (No. 17). (S.I. 1960 No. 1796.) 5d.

London (No. 55). (S.I. 1960 No. 1799.) 5d.

County of Middlesex (No. 12). (S.I. 1960 No. 1800.) 5d.

City and County Borough of Sheffield (No. 2). (S.I. 1960 No. 1835.) 5d.

County of Somerset (No. 10). (S.I. 1960 No. 1798.) 5d.

County of Sussex, East (No. 3). (S.I. 1960 No. 1801.) 5d.

County of Sussex, West (No. 2). (S.I. 1960 No. 1807.) 5d.

County of Sussex, West (No. 3). (S.I. 1960 No. 1836.) 5d.

County of Warwick (No. 12). (S.I. 1960 No. 1820.) 5d.

County of York, North Riding (No. 7). (S.I. 1960 No. 1806.) 5d.

County of York, North Riding (No. 8). (S.I. 1960 No. 1822.) 5d.

Sutherland County Council (Loch Horn) Water Order, 1960. (S.I. 1960 No. 1803 (S.90).) 5d.

Wages Regulation (Ready-made and Wholesale Bespoke Tailoring) Order, 1960. (S.I. 1960 No. 1811.) 8d.

This Order, which has effect from 19th October, 1960, sets out the statutory minimum remuneration payable in substitution for that fixed by the Wages Regulation (Ready-made and Wholesale Bespoke Tailoring) Order, 1959, which is revoked.

Wycombe Rural District (Advance Payments for Street Works) Order, 1960. (S.I. 1960 No. 1825.) 7d.

SELECTED APPOINTED DAYS

October

19th Wages Regulation (Ready-made and Wholesale Bespoke Tailoring) Order, 1960. S.I. 1960 No. 1811.)

26th Israel (Extradition) Order, 1960. (S.I. 1960 No. 1660.)

BOOKS RECEIVED

One Way Pendulum. A Farce in a New Dimension. By N. F. SIMPSON. pp. 94. 1960. London: Faber and Faber. 10s. 6d. net.

Double Taxation. A Treatise on the Subject of Double Taxation Relief. By C. E. GARLAND, of the Middle Temple, Barrister-at-Law, and PERCY F. HUGHES. pp. (with Index) 213. 1960. London: Taxation Publishing Company, Ltd. £1 10s. net.

The Verdict of the Court. Edited by MICHAEL HARDWICK, with an Introduction and Summing-up by The Rt. Hon. LORD BIRKETT, P.C. pp. 198. 1960. London: Herbert Jenkins. £1 1s. net.

Law for the Rich. A Plea for the Reform of the Abortion Law. By ALICE JENKINS, with an introduction by GLANVILLE WILLIAMS, LL.D., F.B.A. pp. 95. 1960. London: Victor Gollancz, Ltd. 15s. net.

Overseas Students in Britain. Issued by the Standing Committee of the London Conference on Overseas Students. pp. 35. 1960. London: London Overseas Department of the British Council. 1s. 6d. net.

The Elements of Estate Duty. Third Cumulative Supplement to Second Edition. By C. N. BEATTIE, LL.B., of Lincoln's Inn, Barrister-at-Law. pp. 12. 1960. London: Butterworth & Co. (Publishers), Ltd. 3s. 6d. net.

The Law Relating to Caravans. Supplement. By ROLAND J. RODDIS, L.M.T.P.I., of the Middle Temple, Barrister-at-Law. 1960. London: Shaw and Sons, Ltd. Service issue.

Pension Schemes and Retirement Benefits. First Supplement to Second Edition. By GORDON A. HOSKING, F.I.A., F.S.S., Associate of the Institute of Taxation. pp. 49. 1960. London: Sweet and Maxwell, Ltd. 5s. net.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

CEYLON: AGRICULTURAL LAND: COMPULSORY PURCHASE: STATUTORY REQUIREMENTS

Land Commissioner *v.* Pillai and Another

Lord Tucker, Lord Keith of Avonholm, Lord Jenkins, Lord Morris of Borth-y-Gest and the Rt. Hon. L. M. D. de Silva

27th July, 1960

Appeal from the Supreme Court of Ceylon.

Section 3 of the Land Redemption Ordinance, 1942, of Ceylon, provides that the Land Commissioner may acquire on behalf of the Government any agricultural land if he is satisfied that the land was "transferred by the owner of the land to any other person in satisfaction or part satisfaction of a debt which was due from the owner to such other person and which was, immediately prior to such transfer, secured by a mortgage of the land." Elaris Perera, the owner of Keeriyankalliya estate, mortgaged it together with other lands to three persons, one of whom was Sockalingam. The mortgagees were correal creditors. By a second mortgage Perera mortgaged lands, including the estate, to five persons, who included Sockalingam and Sekappa. Thereafter Sockalingam instituted proceedings against Perera, putting the second mortgage bond in suit, and obtained a decree. A deed of transfer was thereafter executed by Perera as vendor transferring the estate and certain other lands to Sockalingam and Sekappa in the proportion of an undivided two-thirds share to Sockalingam and an undivided one-third share to Sekappa. The deed recited that the consideration for the transfer was Rs.75,000, but the attestation clause certified that "the full consideration . . . was set off in full satisfaction of the claim and costs due" in the mortgage suit "and the principal and interest due on" the first mortgage bond (to which Sekappa was not a party). The Land Commissioner having made a determination under the Ordinance of 1942 to acquire the estate, the plaintiff in the present suit, as a bona fide purchaser for value of the lands from the original transferees of the lands from Perera, claimed against the Attorney-General of Ceylon and "the Land Commissioner, Colombo" an injunction restraining them from taking steps under the Ordinance to acquire the lands. At the trial it was conceded that the Attorney-General could not be sued, and he was dismissed from the action. The action was dismissed. An appeal to the Supreme Court of Ceylon was allowed on 31st January, 1958, it being held, *inter alia*, that the Land Commissioner could be sued *nomine officii*, and that the action could also be maintained against the Attorney-General, and an injunction was issued as prayed. The Land Commissioner appealed.

LORD MORRIS OF BORTH-Y-GEST, giving the judgment, said that "debt" in s. 3 of the Ordinance included a debt due under a mortgage decree founded on a mortgage bond; that the section was applicable where the lands transferred were some only of the lands secured by mortgage, and that the circumstance that undivided shares were taken did not alter the fact that the land (which included the estate) was transferred by Perera within the meaning of the section. The claim in the mortgage suit was, however, by Sockalingam only, and Sekappa was not party to the first mortgage bond. Accordingly, although the land was transferred to Sockalingam and Sekappa, it was not transferred in satisfaction of a debt due to both but to Sockalingam only, and the determination of the Land Commissioner was not, therefore, warranted by the section, which, being of an expropriatory nature, must be construed strictly. Their lordships agreed with the decision in *Perera* v. *Unantenna* (1954), 54 N.L.R. 457. Although the Land Commissioner was not entitled to make the determination he did under s. 3, the Supreme Court's judgment could not, for certain procedural reasons, stand, but it was not, in view of all the circumstances, appropriate at this stage of the litigation that some form of declaration of invalidity of the Commissioner's determination should be made, and the action must be dismissed. If the authority of a Land Commissioner to make a determination under s. 3 was challenged the appropriate procedure was by way of an application for certiorari: *Leo* v. *Land Commissioner* (1955), 57 N.L.R. 178. The Land Commissioner was not a corporation sole. Lastly, any question of finality of a commissioner's determination only arose in regard to his exercise of individual judgment whether to acquire any land; the antecedent question whether any particular land was land which he was authorised to acquire was not one for his final decision, but was for decision by the courts. Appeal allowed; judgment of the Supreme Court (59 N.L.R. 313) set aside.

APPEARANCES: *E. F. N. Gratiaen*, Q.C. (Ceylon), *Walter Jayawardena* and *Dick Taverne* (*T. L. Wilson & Co.*); *Sir Frank Soskice*, Q.C., and *Joseph Dean* (*Graham Page & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [3 W.L.R. 626

SOLICITOR: PARTNERSHIP TRUST ACCOUNT: FRAUDULENT AND UNAUTHORISED USE BY PARTNER: CLAIM IN CONVERSION AGAINST BANK

Commercial Banking Co. of Sydney, Ltd. *v.* Mann

Viscount Simonds, Lord Reid, Lord Radcliffe, Lord Tucker, Lord Morris of Borth-y-Gest

6th October, 1960

Appeal from the Supreme Court of New South Wales.

A partnership agreement under which the respondent, Edward Rolf Mann, a solicitor, and Gordon Arthur Richardson carried on business provided, *inter alia*, that all the assets of the partnership, including money in any partnership banking account, were the property of the respondent, and that cheques might be drawn on the partnership banking account by either partner. Richardson, in purported exercise of that authority, drew thirteen cheques on the partnership "trust account" with the Australia and New Zealand Bank, Ltd. (the "A.N.Z. bank"), in the form "Pay bank cheque favour H. Ward," and in each case made application in the firm's name (E. R. Mann & Co.) "per G. Richardson" for a bank cheque in favour of H. Ward for an amount equal to that of the cheque. The A.N.Z. bank debited the partnership account with the amount of each cheque and issued a bank cheque for an equal amount in favour of H. Ward or bearer. The cheques were taken by Ward to a branch of the appellant bank, the Commercial Banking Co. of Sydney, Ltd., where he had an account, and there cashed. In due course each of the cheques was paid by the A.N.Z. bank to the appellant bank against delivery. Richardson had acted fraudulently throughout; Ward was not a client of the partnership and no client had authorised the payment to him of any money held in the trust account. In an action by the respondent to recover from the appellant bank the sum of £3,505 on each of two counts, the first that the appellant had received that sum to his use, the second that the appellant had converted thirteen bank cheques the property of the respondent, Walsh, J., in the Supreme Court of New South Wales on 27th April, 1960, found for the

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KING & CO., Chartered Surveyors, Factory Valuers and Agents, 71 Bishopsgate, E.C.2. Tel. LONdon Wall 7201 (5 lines). See also North London.

MARK LIELL & SON, Chartered Surveyors, 9-13 Crutched Friars, E.C.3. Telephone ROYal 5454. And East London.

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HAROLD WILLIAMS & PARTNERS, Chartered Surveyors, Valuers, Chartered Auctioneers and Estate Agents, Temple Chambers, Temple Avenue, E.C.4. Tel. Ludgate Circus 9288. And at 80 High Street, Croydon. Tel. Croydon 1931.

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BARBER & MOORE, F.A.L.P.A., 26 Stoke Newington Road, N.16. Tel. CLissold 2143/4.

BATTY & STEVENS, 269 Archway Road, Highgate, N.6. Tel. MOU 3424-5. Also at Muswell Hill, Finchley and Barnet, Herts.

KING & CO., Chartered Surveyors, 725 Green Lanes, N.21. Tel. LABurnum 1137 (4 lines). See also City of London.

J. MAUNDER TAYLOR, Chartered Surveyor, Chartered Auctioneer and Estate Agent. 1318 High Road, N.20. Tel. HILLside 2377/7217.

NEWBON & SHEPHARD, Auctioneers, Surveyors and Estate Agents, 274/5 Upper Street, Islington, N.1. Tel. CANonbury 1800.

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respondent on each count and gave judgment for the sum claimed. The appellant bank appealed.

VISCOUNT SIMONDS, giving the judgment, said that bank cheques were similar to "bank drafts" as known in the United Kingdom and were commonly used by solicitors in the settlement of conveyancing transactions and by other persons engaged in commercial transactions where it was inconvenient to use cash but the creditor wished for some further assurance of payment than the debtor's personal cheque. They were in legal significance promissory notes made and issued by the bank. It had been assumed, rightly, that if the claim in conversion failed so also must that of money had to the use of the respondent. The claim in conversion could be maintained only if the cheques were the property of the respondent. Richardson having obtained the bank cheques in fraud of the respondent and without his authority express or implied—the relevant authority was that as between the respondent and Richardson, and the latter's authority only extended to the drawing of cheques for the proper purposes of the partnership—they did not become the respondent's property and the claim in conversion failed: see *Union Bank of Australia, Ltd.* v. *McClintock* [1922] 1 A.C. 240. The principle that the purchaser of a chattel takes it, as a general rule, subject to what may turn out to be informalities of title, had no application to a case of misappropriation of funds by an agent and their subsequent application for his own purposes: *Cundy* v. *Lindsay* (1878), 3 App. Cas. 459. Further, the respondent had also failed to prove a conversion by the appellant bank of cheques which he sought to make his own by ratification, for, if he ratified at all, he ratified the dealing by Ward and the appellant bank with the cheques, and, if he did not ratify, nothing had been converted that ever belonged to him: *McClintock's* case, *supra*, and *Bird* v. *Brown* (1850), 4 Exch. 786. Appeal allowed; action dismissed. The appellant did not ask for costs.

APPEARANCES: *J. D. Holmes*, Q.C., *R. M. Hope* and *P. A. Twigg* (all of Australia) (*Bell, Brodrick & Gray*); *D. A. Staff*, Q.C., *Russell Bainton* and *P. G. Saywell* (all of Australia) (*Light & Fulton*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [3 W.L.R. 726

Court of Appeal

COUNTY COURT: JURISDICTION: DAMAGES: ACTION TRANSFERRED BY AGREEMENT FROM HIGH COURT TO COUNTY COURT

Williams *v.* Settle

Sellers, Willmer and Harman, L.JJ. 30th May, 1960

Appeal from Westminster County Court.

The defendant, a professional photographer, was commissioned to take photographs of the plaintiff's wedding; the copyright in the photographs vested in the plaintiff. two years later, when the plaintiff's wife was expecting a child, her father was murdered in circumstances which attracted publicity. The defendant, without authority, sold certain of the photographs to representatives of the Press and one of them, showing a wedding group, was subsequently published prominently in two national newspapers. The plaintiff brought an action in the High Court claiming, *inter alia*, damages for breach of copyright in the photographs. The plaintiff's solicitors in due course took out a summons for directions and sent it to the defendant's solicitors under cover of a letter in which they asked whether the defendant agreed to the action being transferred to the county court; the defendant's solicitors replied that they had no objection to this course being followed. The master made an order on the summons that the action be transferred by consent to the county court. He gave no indication of the provision under which he purported to act, nor did he record any inquiry as to any abandonment by the plaintiff of the excess of his claim over £400; no such abandonment was ever made expressly in the statement of claim or elsewhere. At the trial the judge found that the defendant's explanation of his conduct was very dishonest, and that he was an accessory before the fact to vulgar and offensive behaviour by the newspapers, the principal villains; he regarded it as a shocking case and awarded vindictive damages of £1,000. No formal memorandum of agreement had ever been prepared by the parties, nor were the letters containing the agreement to transfer the action filed by the plaintiff until after the hearing. The defendant appealed, contending that the judge had no jurisdiction to award damages exceeding £400 and that, in any case, the award was excessive.

SELLERS, L.J., said that having regard to the provisions of the County Courts Act, 1934, and the County Court Rules, 1936, the facts showed that the action was transferred under s. 65 and pursuant to s. 43 of the Act of 1934 (now replaced respectively by ss. 67 and 42 of the County Courts Act, 1959), and not under s. 45 and pursuant to s. 42 (respectively ss. 45 and 41 of the Act of 1959); and that, therefore, the jurisdiction of the county court judge in regard to damages was unlimited. An action transferred by agreement under s. 65 and pursuant to s. 43 was a High Court action, unlimited and unrestricted, which fell for trial in the county court. Although the agreement between the parties was contained in two documents it was a memorandum within the meaning of s. 43; and the facts that it was not in existence at the date of the issue of the summons and that it was not filed until after judgment (in breach of Ord. 16, r. 10 (2) (*b*), of the County Court Rules, 1936) were procedural blemishes which did not deprive the county court of jurisdiction (*R.* v. *Judge Willes; ex parte Abbey National Building Society* [1954] 1 W.L.R. 136). The judge was entitled not only at common law but by the provisions of s. 17 (3) of the Copyright Act, 1956, to award vindictive damages; and having regard to the scandalous conduct of the defendant and the flagrant infringement of the plaintiff's copyright the damages were not too high.

WILLMER, L.J., concurred.

HARMAN, L.J., concurring, said that it would be a salutary practice that orders for transfer should state *ex facie* the section under which the transfer was being made.

APPEARANCES: *Neil Lawson*, Q.C., and *T. Ian Payne* (*Blundell, Baker & Co.*, for *Brighouses*, Southport); *D. Tolstoy*, Q.C., and *L. J. Belcourt* (*Michael Kramer & Co.*).

[Reported by GROVE HULL, Esq., Barrister-at-Law] [1 W.L.R. 1073

LANDLORD AND TENANT: JUDGMENT FOR POSSESSION: SALE OF PROPERTY: ASSIGNMENT TO COMPANY WITHOUT BENEFIT OF JUDGMENT

Chung Kwok Hotel Co., Ltd. *v.* Field

Hodson, Ormerod and Harman, L.JJ. 15th July, 1960

Appeal from Marylebone County Court.

The owner and landlord of a dwelling-house obtained by consent on 23rd February, 1959, an order from the county court for possession of a flat on the premises occupied by the defendant. By an agreement of 8th May 1959, she agreed to sell the property subject to and with the benefit of the order for possession. That purchase was not completed, and the benefit of the agreement of 8th May was later sold to a sub-purchaser. On 4th July, 1959, the landlord transferred the property to the sub-purchaser, who on the same day executed a deed of trust declaring that he held the property on trust for the plaintiff company and a deed transferring the property to the company. He did not transfer the benefit of the contract of 8th May to the company.

The defendant refused to give up possession, and the plaintiff company sought to enforce the order for possession.

HARMAN, L.J., said that on appeal two points were taken: first that an order for possession of this sort was not assignable at all: secondly that, even if it were, there had been no assignment. His lordship did not think that it was necessary to decide finally whether an order of this kind was assignable at law. He rather doubted it. There would be an obvious difficulty in this case in that the order contained an order for costs. Whether one could assign part of an order without the rest seemed at least very doubtful. On the whole he would think that one could not; and he would be inclined to the view, without deciding it, that this order, or the part of the order which dealt with possession, was probably not at law assignable. The question was whether there had been any assignment if the judgment, or that part of it which related to possession, were assignable. It was said by counsel for the plaintiff company that the benefit of such a judgment passed on a mere conveyance of the land—as if it were, so to speak, one of the appurtenances passing under the general words of a conveyance. That was not a view his lordship could take. The proper person to enforce this judgment was the original landlord. It was true that the defendant might have said that this would be futile because she had lost all interest in the premises; but if she were supported by the present landlords, who now had the beneficial interest, he did not doubt that the writ would go in her favour. The appeal must be allowed.

HODSON and ORMEROD, L.JJ., concurred.

APPEARANCES: *P. A. W. Merriton* (*Beach & Beach*); *Robin Dunn* (*Cliftons*).

(Reported by Mrs. IRENE G. R MOSES, Barrister-at-Law) [1 W.L.R. 1112

Chancery Division

PROFITS TAX: REVENUE OR CAPITAL EXPENDITURE: PAYMENTS BY OPENCAST COAL MINING COMPANY FOR RIGHT TO ENTER ON AND DIMINUTION IN VALUE OF LAND

H. J. Rorke, Ltd. *v.* Inland Revenue Commissioners

Cross, J. 13th July, 1960

Appeal from the Special Commissioners.

A company which carried on the business of opencast coal mining entered into an agreement dated 16th December, 1957, with a landowner, whereby certain land was let to the company for one year on payment of a royalty for every ton of coal won from the land, the company covenanting to restore the surface of the land on the completion of the opencast mining operations. The company further agreed to pay to the lessor £250 for the right to enter upon the land demised and a further sum of £250 as compensation for the diminution in value of the land and the destruction of land drains, etc. In 1957 and 1958 the company made two further agreements with landowners in substantially the same terms. The payments for the right of entry and for diminution in value of the land provided for in all three agreements were a normal and recurrent incident in the trade of opencast coal mining as carried on by the company and others in the industry. The company appealed against assessments to profits tax on the ground that the whole of the payments made by them for the right of entry and for diminution of value pursuant to the agreements were revenue expenditure and fell to be allowed as deductions under s. 137 of the Income Tax Act, 1952.

CROSS, J., said that if one of these payments was capital then it followed that the other was capital and *vice versa*. In making these payments to landowners the company was not buying circulating capital, i.e., coal, but was acquiring rights which enabled it to acquire circulating capital; this distinction was clearly drawn in all the cases and recognised by Jenkins, L.J., in *Stow Bardolph Gravel Co., Ltd.* v. *Poole* (1954), 35 T.C. 459, at pp. 473, 474. Consequently, the payments were marked as being of a capital nature and, notwithstanding their recurrence and transience, were to be disregarded in computing the profits and gains of the company for profits tax purposes.

APPEARANCES: *R. Borneman*, Q.C., and *P. W. I. Rees* (*Nordon & Co.*); *F. N. Bucher*, Q.C., and *Alan S. Orr* (*Solicitor, Inland Revenue*).

(Reported by Miss PHILIPPA PRICE, Barrister-at-Law) [1 W.L.R. 1132

INCOME TAX: DEED OF COVENANT: DISCRETIONARY TRUST FOR EDUCATION OF CHILDREN OF COMPANY'S EMPLOYEES

Barclays Bank, Ltd. *v.* Naylor (Inspector of Taxes)

Cross, J. 21st July, 1960

Appeal from the General Commissioners for St. Martin-in-the Fields, London.

A company had in force a scheme for giving financial assistance to its overseas staff whereby £50 per annum for each child up to a maximum of two children to provide for their education between 13 and 18 years of age was included in the cost of living allowance. This proving inadequate, the directors of the company decided to replace it by a new scheme under which a parent would normally be relieved of 75 per cent. of the school fees payable for every child plus £50 per annum per child towards the cost of holiday accommodation, between a child's eighth and eighteenth birthdays. The staff concerned were those whose conditions of service were controlled or influenced by the company, and who worked in territories where appropriate educational facilities did not exist or where the climate was unsuitable for children. Assistance was normally to cease on the death of the child, or the child leaving school, or the parents ceasing to be resident abroad, or the death of the father. On 28th March, 1957, the company entered into a deed of covenant with four of its employees as trustees in which it covenanted that it would, for a period of seven years starting with 1957, pay to the trustees on 1st April in each year £27,000 less income tax at the standard rate, the trustees to hold the sums upon trust at their discretion to pay or apply them for maintenance, education or otherwise for the benefit of the beneficiaries named in a list of children of overseas staff. In February, 1957, *C*, an overseas employee of the company, requested assistance for his son, *M*, then aged nine, who was being educated in England. *M*'s name was included in the list of sixty-eight beneficiaries, and *C* was told of the following arrangements for the working of the scheme: for each term the trustees were to pay a sum of money into a bank account in *M's* name amounting to 75 per cent. of his school fees plus one-third of £50 towards maintenance during holidays, less United Kingdom income tax at the standard rate. The deficiency was to be made up by a loan equal to the tax deducted in order to meet expenses until *M* was able to obtain repayment of tax as a single person resident in the United Kingdom. *C* was to pay into *M's* account sufficient to pay the balance of expenses, and when he received the bills he was to forward them to the bank with instructions to pay them and debit *M's* account. The bank would then submit the bills to the trustees so that the payments under the trust could be made to *M's* account. The trustees credited to *M's* account for the autumn term, 1956, and the spring term, 1957, a total amount of £143 11s. 8d., of which £82 11s. 3d. was a net grant from the trust and £61 0s. 5d. a loan from the company. *C* undertook to repay the loan to the extent that tax was recovered. The bank, as *M's* agent, claimed repayment of the £61 0s. 5d. but the claim was disallowed by the inspector of taxes and by the General Commissioners.

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CROSS, J., said that *M* was under no sort of obligation to do anything in return for the benefits he might receive under the deed, nor was *C* under any obligation to remain in the service of the company. The company executed the deed in order to obtain a commercial advantage, but that advantage would result, if at all, simply through the performance by the trustees of their duties under the deed, which duties would have been the same if the company had had no commercial advantage in mind. The sums paid to the trustees under the deed were annual payments within the meaning of the Income Tax Acts and income in the hands of the trustees. The £82 11s. 3d. was paid by the trustees in the genuine and proper exercise of their discretion into *M's* account and did not become part of *C's* remuneration but remained part of *M's* income, notwithstanding that the payment was made in order to pay bills for which *C* was legally liable. Accordingly, the claim to £61 0s. 5d. repayment of tax must be allowed. If trustees under a trust of this kind thought that it was for the child's benefit that the income should be expended in paying a school bill for which the child's parent was liable, or put the income at the disposal of the parent, and he used it to discharge such a bill, the income did not thereby lose its character of income of the child and become income of the parent.

APPEARANCES: *F. Heyworth Talbot*, Q.C., and *H. H. Monroe*, Q.C. (*J. W. Ridsdale*); *F. N. Bucher*, Q.C., *E. Blanshard Stamp* and *Alan S. Orr* (*Solicitor, Inland Revenue*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law] [3 W.L.R. 678

PROFITS TAX: DISTRIBUTION: WHETHER MAIN PURPOSE OF TRANSACTION AVOIDANCE OF TAX LIABILITY

Ackland & Pratten, Ltd. (in liquidation) *v.* Inland Revenue Commissioners

Cross, J. 25th July, 1960

Appeal from the Special Commissioners.

A private company with a capital of £60,000, divided into 10,000 £1 preference shares, all of which had been issued, and 50,000 £1 ordinary shares, of which 36,002 had been issued, on 24th July, 1957, passed a special resolution that the capital be increased by £190,000, divided into 190,000 £1 ordinary shares, and that £198,011, part of the company's profit and loss appropriation account, be capitalised and applied in paying up in full at par 198,011 unissued £1 ordinary shares to be allotted to the existing shareholders in the proportion of eleven new shares for every two ordinary shares held. On 21st October, 1957, these shares were allotted to the shareholders, thus increasing the nominal amount of the ordinary share capital to £234,013. On 27th November, 1957, the company went into voluntary liquidation, a reconstruction being considered desirable. By an agreement made with the new company on 28th November, 1957, the company and the liquidator transferred to the new company almost all its assets, amounting to £161,517, of which £10,721 was reserved for taxation, so that there was available for distribution by the liquidator £150,796. One hundred and seventeen thousand and six fully paid £1 ordinary shares were allotted by the new company in favour of the shareholders of the old company, who were substantially the same as those of the new company. On 14th October, 1957, inspectors of taxes were informed that the Commissioners of Inland Revenue were not seeking leave to appeal to the House of Lords in *Inland Revenue Commissioners* v. *Pollock & Peel, Ltd. (in liquidation)* [1957] 1 W.L.R. 822; and were instructed to apply the decision of the Court of Appeal in appropriate cases. Since the paid-up capital of the old company, as increased by the capitalisation of undistributed profits and the allotment of paid-up shares, exceeded £150,796, the result of that decision was that distribution of that sum by the liquidator would not be a gross relevant distribution for the purpose of s. 35 (1) (*c*) of the Finance Act, 1947, and there would be no liability to profits tax in respect of it. On 3rd December, 1957, the old company and the new company gave notice to the commissioners of their election that s. 36 (4) of the Finance Act, 1947, should apply to the agreement of 28th November, 1957, with the result that the distribution to the shareholders of the company of the shares in the new company on the liquidation of the old company would not count as a distribution by the old company. On 15th August, 1958, the commissioners, being of the opinion that avoidance or reduction of liability to profits tax was the main purpose, or one of the main purposes, of the transactions, made a direction under s. 32 (1) of the Finance Act, 1951, that the liability of the old company to profits tax for the chargeable accounting period ended 28th November, 1957, should be computed as if, for the purposes of s. 35 (1) (*c*) of the Finance Act, 1947, the total nominal value of the paid-up ordinary share capital of the company were at all relevant times £36,002 and no more, so that any distribution in excess of that amount would attract profits tax. At the time of making the direction the commissioners had not determined an accounting period under s. 20 (2) (*b*) of the Finance Act, 1937. The old company appealed from the decision of the Special Commissioners dismissing an appeal against the direction.

CROSS, J., said that in the absence of an explanation by the company that the liquidation was not contemplated at the time of the resolution of 24th July, 1957, and that avoidance of profits tax liability was not in its mind until all the transactions were completed, the Commissioners of Inland Revenue were justified in finding that the conditions of s. 32 (1) of the Act of 1951 were satisfied and that the main purpose, or one of the main purposes, of the transactions was the avoidance or reduction of liability. It was sufficient under s. 32 (3) of the Act of 1951 if the main benefit which might have been expected to accrue from the transaction was the avoidance of tax liability, and if the commissioners were satisfied of that, then the avoidance of such liability was to be deemed to have been a main purpose. It was manifest that an independent, objective third party would think that it was a probability that the avoidance of tax was the main benefit to be expected. The reference in s. 32 (3) to the benefit in "the three years immediately following the completion of the transactions" meant that during the next three years, whether there had been a liquidation or not, there would in fact be some saving of tax; the subsection was, therefore, apt to cover a case such as the present where there had been a liquidation. The direction had sufficiently specified "the adjustments as respects liability to the profits tax" within the meaning of s. 32 (4) of the Act of 1951, which the commissioners considered appropriate, and the fact that the last chargeable accounting period under s. 20 (2) (*b*) of the Act of 1937 had not been determined when the direction was made did not invalidate the direction since it clearly referred to whatever might prove to be the last chargeable accounting period. Section 36 (4) (ii) of the Act of 1947 dealt with the liability of the new company, and "already" referred not only to the time before liquidation but to the whole of the time before the question of the amount of any distribution charge on the new company fell to be considered, so that any distribution charge to which the old company became subject after liquidation would be taken into account in estimating the liability of the new company when it fell to be determined. There was, therefore, no justification for reading into the subsection a freeing of the old company from all liability to profits tax from the date of liquidation. Accordingly, the appeal must be dismissed.

APPEARANCES: *P. J. Brennan* (*Rider, Heaton, Meredith & Mills*, for *Osborne, Ward, Vassall, Abbot & Co.*, Bristol); *Peter Foster*, Q.C., and *Alan S. Orr* (*Solicitor, Inland Revenue*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law] [1 W.L.R. 1117

INCOME TAX: DEALER IN STOCKS AND SHARES: WHETHER DIVIDEND TAXABLE AS PROFIT: AGREEMENT BY INSPECTOR: ADDITIONAL ASSESSMENT

Cenlon Finance Co., Ltd. *v.* Ellwood (Inspector of Taxes) Ellwood (Inspector of Taxes) *v.* Cenlon Finance Co., Ltd.

Cross, J. 29th July, 1960

Appeal from the Special Commissioners.

In October, 1953, the company bought the whole of the share capital in Henry White (Sutherland House), Ltd. In November, 1953, Henry White paid to the company a dividend of £25,000 out of a capital profit. The company sold its holding in Henry White in December, 1953. In July, 1955, the company submitted to the inspector of taxes accounts for the years 1953–54 and 1954–55 with a computation of its profits for the purposes of case I of Sched. D to the Income Tax Act, 1952, from which dividends from United Kingdom companies (including that from Henry White) were excluded. The inspector agreed the company's computation and issued notices of assessment for the years 1953–54 and 1954–55 accordingly. Subsequently he issued a notice of assessment for the year 1955–56 in accordance with the figures agreed. A new inspector of taxes was appointed in May, 1956, and, having received a memorandum from the chief inspector and read the documents relating to the company's affairs, he reached the conclusion that the dividend from Henry White should have been included as a trading receipt in the computation of the company's profits for the purposes of case I. Additional assessments for the years 1953–54 to 1955–56 and a first assessment for the year 1956–57 were made on that footing. The company appealed and the Special Commissioners decided that the dividend should have been included in the case I computation; that the new inspector had made a "discovery" within the meaning of s. 41 of the Act but that as regards the years 1953–54 and 1954–55 he had come to an agreement with the company within s. 510 and was prevented by s. 50 (2) from making the additional assessments. Both parties appealed.

CROSS, J., said that, although there was no express exemption, the provisions in the Income Tax Acts enabling companies to deduct tax from dividends paid to their shareholders had been construed as impliedly exempting dividends from tax in the hands of the shareholders. The question was whether the recipient of a dividend was not only freed from liability to be assessed to tax on the dividends themselves but was also entitled to have them excluded from the receipt side of an account the balance of profit on which was subject to tax under case I. He did not see how the answer could depend on whether the dividend was paid out of capital or revenue profits. The implied exemption applied to all dividends alike. In *Hughes* v. *Bank of New Zealand* [1938] A.C. 366, it was held that the exemption conferred by the Income Tax Act, 1918, in respect of war loan interest was unlimited so that the interest could not be taxed indirectly by inclusion in the bank's trading receipts for the purpose of assessment under case I. The implied exemption of dividends from income tax was a general exemption analogous to the express exemption of war loan interest. The dividend was, therefore, properly left out of the company's case I computation. The Crown admitted that the company and the inspector had come to an agreement and the company admitted that, having regard to *Commercial Structures Ltd.* v. *Briggs* [1948] 2 All E.R. 1041, he must hold that the new inspector had made a "discovery." Section 41 did not limit the time in which a discovery might be made. Section 47 expressly cut the period down to six years where there had been no fraud or wilful default. The question was whether the right to make additional assessments consequent on discoveries was further cut down by s. 50 (2). That section meant no more than that the determination of an appeal by the commissioners was to be final with regard to the particular matter which had been the subject of the appeal. If an appeal were decided by the commissioners on a point of law and the inspector did not ask for a case to be stated but subsequently the court decided in another case that the view of the commissioners was wrong, the inspector on hearing of that decision would have "discovered" that the first assessment had been wrong. Nevertheless, he would be precluded by s. 50 from raising an additional assessment. The same result would by reason of s. 510 ensue if he came to an "agreement" with the appellant on the point at issue. The commissioners were, therefore, right in holding that no additional assessments could be made for the years 1953–54 and 1954–55.

APPEARANCES: *Philip Shelbourne* (*Manches & Co.*); *R. Borneman*, Q.C., and *Alan S. Orr* (*Solicitor, Inland Revenue*).

[Reported by Miss V. A. MOXON, Barrister-at-Law] [3 W.L.R. 690

Queen's Bench Division

CHARTERPARTY: SUEZ CANAL CLOSURE: FRUSTRATION

Société Franco-Tunisienne d'Armement *v.* Sidermar S.P.A.

Pearson, J. 18th May, 1960

Special case stated by an arbitrator pursuant to s. 21 (1) (*b*) of the Arbitration Act, 1950.

By a charterparty dated 18th October, 1956, shipowners chartered their vessel to charterers for the carriage of iron ore from Masulipatan, on the east coast of India, to Genoa. The terms of the charterparty were, *inter alia*, that the vessel should proceed with all convenient speed to Masulipatan and there load. The captain was to wireless the shippers at Madras giving four days' preliminary notice and also forty-eight hours' definite notice of his expected time of arrival at the loading port. The captain was also to telegraph to "Maritsider Genoa" on passing the Suez Canal. On 26th July, 1956, President Nasser had announced the nationalisation by Egypt of the canal. Thereupon, the canal became the subject of an international crisis and when the charterparty was concluded there was a possibility that the crisis could result in a resort to force, in which event the canal might become closed to shipping. At the time of the charterparty the route via the Suez Canal was the shortest and customary route from Masulipatan to Genoa. When they entered into the charterparty both shipowners and charterers appreciated these facts. From 28th October, 1956, until the general cease fire, there was heavy fighting in the Sinai Peninsula between Egyptian and Israeli forces. By 4th November at least eight ships had been sunk in the Suez Canal, blocking it to shipping. By 9th November, when the vessel arrived at Masulipatan, both parties appreciated that it was likely that the canal would remain blocked for a period of time which would, if the vessel were to await the re-opening of the canal, be so long as to put an end to the commercial purpose of the venture. Nevertheless notice of readiness to load was given immediately the vessel arrived at Masulipatan. The charterers tendered a cargo of iron ore which was loaded with the captain's permission between 13th and 18th November. A bill of lading dated 18th November was issued by the shipowners in respect of this cargo. The vessel sailed for Genoa on 19th November. On 20th November, the shipowners informed the charterers that the blocking of the canal had brought the charterparty to an end and they claimed freight at the rate of 209s. per long ton of the cargo. The charterers maintained that the shipowners remained bound by the charterparty, and that they could not claim freight at a rate higher than that provided by the charterparty, namely, 134s. per long ton.

PEARSON, J., said that the charterparty was frustrated by the blocking of the Suez Canal because, having regard to the

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Cardiff.—DONALD ANSTEE & CO., Chartered Surveyors, Auctioneers and Estate Agents, 91 St. Mary Street, Tel. 30429.

Cardiff.—S. HERN & CRABTREE, Auctioneers and Valuers. Established over a century. 93 St. Mary Street. Tel. 29383.

Cardiff.—J. T. SAUNDERS & SON, Chartered Auctioneers & Estate Agents. Est. 1895. 16 Dumfries Place, Cardiff. Tel. 20234/5, and Windsor Chambers, Penarth. Tel. 22.

Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.

Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

NORTH WALES

Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.

Wrexham, North Wales and Border Counties.—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.

express provisions of the contract and the surrounding circumstances, it was a term of the contract (whether express or implied) that the vessel was to go by the Suez Canal route, and the route via the Cape of Good Hope was so circuitous, unnatural and different in a number of respects that it was to be regarded as a fundamentally different voyage. The position was not analogous to the case of a c.i.f. contract for the sale of goods. The possibility, appreciated by both parties, at the time of making their contract, that a certain event might occur, did not necessarily prevent the frustration of the contract by that event when it did occur; it was one of the surrounding circumstances to be taken into account in construing the contract, and had greater or less weight according to the degree of probability or improbability and all the facts of the case. Notwithstanding that notice of readiness to load had been given, and that the shipowners had permitted the cargo to be loaded when they knew that the canal had been blocked, there had been no representation of fact which at common law estopped the shipowners from alleging frustration, and there had been no development of the doctrine of equitable estoppel which was wide enough to cover the facts of the present case. Accordingly the shipowners were entitled to be paid a reasonable freight at the rate of 195s. per long ton on a *quantum meruit*.

APPEARANCES: *A. A. Mocatta*, Q.C., and *R. A. MacCrindle* (*Holman, Fenwick & Willan*); *Roy Wilson*, Q.C., and *Basil Eckersley* (*Crawley & de Reya*).

[Reported by A. D. RAWLEY, Esq., Barrister-at-Law] [3 W.L.R. 701

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: MAINTENANCE: JUSTICES: JURISDICTION: POTENTIALLY POLYGAMOUS MARRIAGE

Sowa *v.* Sowa

Lord Merriman, P., Marshall, J. 22nd June, 1960

Appeal from the Liverpool stipendiary magistrate.

A woman who had entered into a potentially polygamous marriage in Ghana was granted by a magistrates' court a maintenance order against the man on the ground of desertion. The man appealed to the Divisional Court.

LORD MERRIMAN, P., said that in accordance with the principle laid down in *Hyde* v. *Hyde and Woodmansee* (1866), L.R. 1 P. & D. 130, the parties to a polygamous marriage were not, as between each other, entitled to the remedies, the adjudication or the relief of the matrimonial law of England. The complainant was not entitled to a maintenance order. The appeal must therefore be allowed and the order discharged.

MARSHALL, J., delivered a concurring judgment.

APPEARANCES: *R. Z. H. Montgomery* (*Michael Kramer & Co.*, for *Canter, Levin & Mannheim*, Liverpool); *W. G. O. Morgan* (*Helder, Roberts & Co.*, for *John A. Behn, Twyford & Reece*, Liverpool).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law] [3 W.L.R. 733

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Estate Duty—DIRECTION FOR PAYMENT OUT OF RESIDUE—FUTURE DUTY

Q. By a will a testator devised a freehold property "Unto my Trustees Upon Trust to pay the income therefrom to my son . . . for his life and thereafter (subject as hereinafter mentioned) to my grandson . . . absolutely on his attaining the age of twenty-one years." A later clause in the will states that "subject to the payment of . . . and debts which with all duties shall be paid primarily out of my personal estate I give, devise and bequeath all my real and personal property not hereby or by any codicil hereto otherwise specifically disposed of unto my said son . . . absolutely." The testator was survived by his son and also by his grandson, although his grandson has not yet attained twenty-one. On the death of the son duty will be payable by the testator's trustees in respect of the freehold property devised for the testator's son for life and the testator's trustees are presumably accountable. However, would you please advise whether, on the wording above disclosed, the freehold property devised for the testator's son for life must be sold or mortgaged to realise the duty payable on the son's life interest or whether the residue of the testator's estate should be liable. As the residue was given to the son absolutely there will be no residue available unless the trustees ought to have retained moneys for the specific purpose of payment of estate duty on the death of the life tenant.

A. It is established by a number of authorities, of which *Re Wedgewood* [1921] 1 Ch. 601, is the leading case, that a direction that death duties are to be paid out of the residuary estate or out of any other particular fund prima facie extends only to the duties payable on the death of the testator and does not extend to duties payable on the death, in the future, of a life tenant entitled to a settled legacy or devise. Put in another way, it needs strong words to charge such future duties on the residue, thus holding up the administration of the estate indefinitely. In the present case we feel no doubt at all that the duty which will be payable on the death of the son will, when the time arrives, be paid out of the settled property, that it is in no way thrown on to residue and there is no obligation to retain any amount of residue wherewith to pay it.

Change of Name of Adopted Child

Q. A client of ours, Mrs. *A*, and her then husband, obtained an order for the adoption by them in the county court in January, 1952, of a girl born in 1951, and the order provided that the child was to be known as Anne *A*. Mr. *A* subsequently died and Mrs. *A* has recently married Mr. *B* and wishes the child to be now known as Anne *B*. We have advised our client that she can make a statutory declaration, setting out the facts and relevant certificates, or alternatively Mr. and Mrs. *B* can apply to a county court for an adoption and change of name of the daughter. The former method would, presumably, not enable the certificate of birth of the daughter to be changed at the registry. Can you suggest another method to achieve the desired object of having the child's birth now registered in the name of Anne *B*?

A. There is no way in which the child's certificate of birth entered at the registry can be changed other than by a further adoption. If Mr. *B* is anxious to take the child as his own in the fullest sense he will no doubt be advised to go through the procedure of adoption, but if the only interest of Mr. and Mrs. *B* is the convenience of having the child known by their name, this seems an unnecessary exercise. They can call the child by any name they like, without any necessity for a statutory declaration or any other legal form; the only difficulty likely to arise is one of evidence if the child should be left a legacy in her assumed name, but even this is unlikely to cause serious trouble as there would no doubt be evidence available that she was the person intended. Of course, wherever a birth certificate must be produced—on application for a passport, for example—the document applied for will be made out in her name as set out in the certificate. If Mr. and Mrs. *B* prefer to have some documentary evidence that little *A* is now known as little *B*, Mrs. *B* should make a statutory declaration, but this is by no means necessary. When the child comes of age she may find it convenient to change her name by deed poll.

NOTES AND NEWS

CHANCERY CHAMBERS AND THE CHANCERY REGISTRARS' OFFICE

Following upon the recommendations of Lord Justice Harman's Committee on Chancery Chambers and the Chancery Registrars' Office (Cmnd. 967) :—

1. The Lord Chancellor has made the following arrangements to take effect on Monday, 17th October :—

(*a*) The Chief Chancery Master will be administrative head of Chancery chambers and the Chancery Registrars' Office.

(*b*) The principal clerks to the registrars will be known as assistant registrars.

(*c*) The Chancery masters will normally be available for ex parte applications from 2.15–2.45 p.m., without appointment.

2. The Lord Chancellor has decided that the number of Chancery masters shall remain seven for the time being and the work in chambers will accordingly be re-allocated as from 11th January, 1961. The details of the arrangement will be published by the Chief Master.

3. Practice directions will shortly be issued regarding the procedure for drawing orders :—

(*a*) Purely procedural orders made in chambers shall, unless otherwise directed at the time of the making of the order, be drawn by the solicitor entitled to the carriage of the order and perfected in the masters' chambers.

(*b*) All other orders will be drawn up by the registrars on the lines recommended by Lord Justice Harman's Committee.

CHANCERY DIVISION : ARRANGEMENT OF BUSINESS

The Lord Chancellor has directed that the proceedings described in column 1 below shall be assigned to the groups mentioned in column 2 and shall be heard and determined by the judges mentioned in column 3.

1 *Nature of Proceedings*	2 *To be Assigned to*	3 *To be Heard and Determined by*
1. Proceedings under the Companies Act, 1948 (Ord. 53B)	Group A	Judges of Group A
2. Proceedings in bankruptcy	Group B	Judges of Group B
3. Proceedings in the Liverpool District Registry or the Manchester District Registry	Group B	Judges of Group B
4. Proceedings under the War Damage Act, 1943 (Ord. 55C)	Group A	Mr. Justice Buckley
5. Proceedings under the Guardianship of Infants Acts, 1886 and 1925 (Ord. 55A, r. 4) and appeals under s. 10 of the Adoption Act, 1958 (Ord. 55A, r. 9)	Group A	Mr. Justice Pennycuick
6. Proceedings under r. 15 (2) of the Public Trustee Rules, 1912	Group B	Mr. Justice Russell
7. Proceedings required to be heard by a single judge under Ord. 54D (Law of Property Acts and Land Registration Act, 1925)	Group B	Mr. Justice Russell
8. Proceedings required to be heard by a divisional court under the Land Registration Act, 1925 (Ord. 54D, r. 7)	Group B	Judges of Group B
9. Proceedings under s. 23 or s. 24 of the Patents Act, 1949, and references and applications under that Act (Ord. 53A)	Group A	Mr. Justice Lloyd-Jacob
10. References and applications under the Registered Designs Act, 1949 (Ord. 53F)	Group A	Mr. Justice Lloyd-Jacob
11. Proceedings under Pt. VIII of the Mental Health Act, 1959	Group B	Judges of Group B

Obituary

Mr. WILLIAM ANTHONY HAZEL, solicitor, of London, E.C.2, died on 12th October, aged 49. He was admitted in 1936.

Mr. HAROLD FELLOWS PEARSON, M.C., solicitor, of London, E.C.4, died on 22nd September, aged 82. He was admitted in 1903.

PRACTICE NOTE

PROBATE, DIVORCE AND ADMIRALTY DIVISION

SUPREME COURT COSTS RULES, 1959, R. 35

The President has given the following directions :—

1. Every application in the Probate, Divorce and Admiralty Division under r. 35 of the Supreme Court Costs Rules, 1959, to review a registrar's decision in respect of the taxation of a bill of costs shall be made to a judge nominated by the President.

2. Every application shall be made by summons to be served within three days after issue, and returnable on a day to be appointed by the judge.

3. Every summons must contain full particulars of the item or items or the amount allowed in respect of which the application to review is made.

4. Each party shall within four days after service of the summons lodge with the chief clerk of the Contentious Department all documents produced in evidence by that party at the hearing before the registrar relating to the item or items or the amount allowed ; and the chief clerk shall then deliver these documents and the summons, objections and answers made and given by the parties respectively at the review of the taxation of the bill of costs by the registrar to the judge.

5. When appointing a day for the hearing of the summons the judge may decide to exercise his power to appoint two or more assessors to sit with him at the hearing, and if the judge does so decide, the chief clerk of the Contentious Department shall give notice of the decision to each of the parties and will, in any case, give to each of them notice of the day appointed by the judge for the hearing of the summons.

6. If the judge decides to appoint assessors the party applying shall within four days after the receipt of notice thereof lodge with the chief clerk of the Contentious Department two or more copies, as the case may be, of the summons, objections and answers made and given by the parties respectively at the review of the taxation of the bill of costs by the registrar for the use of the assessors.

7. When each of the assessors has signified his acceptance of his appointment the chief clerk of the Contentious Department shall send to each of them the notice of his appointment including the day appointed for the hearing of the summons, and a copy of the documents mentioned in para. 6.

B. LONG,
Senior Registrar,
Principal Probate Registry.

12th October, 1960.

EXCHANGE CONTROL : CASH GIFTS

Cash gifts of up to £250 per calendar year may now be made to non-residents by residents of the United Kingdom, it has been announced. Applications up to this amount may be dealt with by authorised banks, which were previously limited to amounts up to £10. Where compassionate grounds or special circumstances such as weddings and twenty-first birthdays exist, applications in respect of sums exceeding £250 will be sympathetically considered by the Bank of England. The new limit will apply also to remittances made through a post office, subject to the conditions of the Overseas Money Order Service.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices : Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone : CHAncery 6855.

Annual Subscription : Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

Classified Advertisements must be received by first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

Classified Advertisements

PUBLIC NOTICES—INFORMATION REQUIRED—CHANGE OF NAME
3s. per line as printed

APPOINTMENTS VACANT—APPOINTMENTS WANTED—PRACTICES AND PARTNERSHIPS and all other headings
12s. for 30 words. Additional lines 2s. Box Registration Fee 1s. 6d. extra

Advertisements should be received by first post Wednesday for inclusion in the issue of the same week and should be addressed to THE ADVERTISEMENT MANAGER, SOLICITORS' JOURNAL, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHAncery 6855

PUBLIC NOTICES

BOROUGH OF EALING

LEGAL Clerk required, mainly for Conveyancing. Salary scale £855–£1,000 per annum (£15 less if under 26). Further particulars and application form, returnable by 31st October, 1960, from Town Clerk, Town Hall, Ealing, W.5.

SURREY COUNTY COUNCIL

ASSISTANT SOLICITOR

Applications invited for this post on J.N.C. Scale D (£1,520–£1,755 p.a. plus recent increase of approximately 12½%). Previous local government experience not essential. Applications stating age, qualifications and experience with names and addresses of two referees to the undersigned by 31st October, 1960.

W. W. RUFF,
Clerk of the Council.

County Hall,
Kingston-upon-Thames.

TRENT RIVER BOARD

APPOINTMENT OF LEGAL ASSISTANT

Applications are invited for the appointment of a Legal Assistant (Unadmitted) at a salary range within A.P.T. Grades III–IV (£960–£1,310 per annum) of the National Scheme of Conditions of Service for Local Government Officers, according to qualifications and experience.

Local Government experience is not essential but applicants must be able to carry through conveyancing and allied transactions with minimum supervision and should have experience in general legal work.

Full particulars of duties, conditions and method of application may be obtained from the undersigned at 206 Derby Road, Nottingham, and should be returned, duly completed, not later than the 7th November, 1960.

IAN DRUMMOND,
Clerk of the Board.

BOROUGH OF CHELMSFORD
COUNTY TOWN OF ESSEX

APPOINTMENT OF ASSISTANT SOLICITOR

Salary £1,310–£1,480 (Grade V)

Applications are invited for the above position which offers an opportunity of interesting and varied work in a rapidly growing County Town. Schemes being undertaken by the Council include new cattle market, new roads and bridges, new sewerage schemes, slum clearance, industrial estate, housing development, private street works, covered swimming pool, crematorium, new civic centre and central area redevelopment. Housing Accommodation available. Five-day Week. Superannuation.

Applications stating age, education, qualifications, experience, the names and addresses of two referees and whether related to any member or officer of the Council should be sent to the undersigned by 31st October, 1960.

B. A. FRANCIS,
Town Clerk.

Municipal Offices,
Chelmsford.

MIDDLESEX MAGISTRATES' COURTS COMMITTEE

APPOINTMENT OF CLERK TO THE JUSTICES

Applications are invited from Barristers or Solicitors qualified under the Justices of the Peace Act, 1949, for the whole-time appointment of Clerk to the Justices of the Petty Sessional Division of Highgate at a salary of between £2,260 and £2,460 at the minimum, arising to between £2,595 and £2,795 at the maximum.

Applications giving full particulars of qualifications and experience, and the names of two referees to The Clerk to the Magistrates' Courts Committee, Guildhall, Westminster, S.W.1, by 14th November. (Quote E.614SJ.)

KENNETH GOODACRE,
Clerk to the Committee.

BOROUGH OF WIDNES

Population 51,000 rising to 65,000 under agreed Development Schemes now in progress

LAW CLERK (Unadmitted)

Required to do conveyancing work, particularly Compulsory Purchase, with only slight supervision.

SALARY A.P.T. III (£960 to £1,140), commencing at £1,020 per annum.

HOUSE (if required). *Removal expenses* in full.

FIVE DAY WEEK. Superannuation. N.J.C. Conditions.

Local Government experience not required.

Applications, quoting two references, to me.

Closing date 25th October, 1960.

FRANK HOWARTH,
Town Clerk.

Town Hall,
Widnes.
October, 1960.

APPOINTMENTS VACANT

ASSISTANT Solicitor recently qualified wanted for old-established general practice in Barnsley; willing to undertake advocacy.—Box 6396, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require unadmitted Probate Clerk. Write giving particulars with age, experience and salary required, to Box 6350, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING and Probate Assistant (admitted or unadmitted) required. Please state experience and salary required.—Charles & Co., 54a Woodgrange Road Forest Gate, London, E.7. MARyland 6167.

LEAMINGTON SPA.—Assistant solicitor or unadmitted managing clerk capable of working with very little supervision required in busy family practice. Mainly conveyancing and probate work. Good prospects for an efficient and energetic man in either category.—Apply to Overell & Swain, 33 Warwick Street, Leamington Spa, with full details.

EXPERIENCED unadmitted Conveyancing and Probate Managing Clerk required for busy practice in Worcestershire. Substantial salary.—Box 7015, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BIRMINGHAM.—Solicitor requires qualified admitted Assistant, mainly Conveyancing. Minimum commencing salary £20 per week. Modern offices. Progressive position.—Box 7063, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

JACOBS BIRD & COMPANY, 20 Waterloo Street, Birmingham, 2, have vacancy for unadmitted Conveyancing Assistant. Salary according to experience but minimum of £18 per week.

WESTON-SUPER-MARE progressive practice requires qualified assistant, two-year contract will be given subject to probationary period and at the end Partnership will be considered. Work mainly Conveyancing.—Box 7053, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SIDCUP, Kent (close by station), Conveyancing assistant required; typing essential. Salary £624 per annum.—Ring Forest Hill 0551.

EAST HANTS.—Urgently wanted (A) young Conveyancing and Probate Assistant (unadmitted), and (B) young Cashier and Costs Clerk (male or female). Typists preferred. Permanent and progressive posts with good prospects.—Apply in own handwriting stating age, experience and salary required to Box 7075, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LEICESTER Solicitor, small office, requires assistant Solicitor for conveyancing, divorce and litigation work. Supervision willingly given. Commencing salary £700 p.a. All replies acknowledged.—Box 7083, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

OLD-ESTABLISHED North London firm urgently require Assistant Solicitor or experienced Clerk to assist in busy conveyancing practice. Salary in accordance with experience. Permanent position for suitable applicant. Box 6934, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required for general work to assist senior partner. Able to work without supervision or with slight supervision. 5-day week. Salary by arrangement.—Write stating age and experience to Marcan & Dean, 20 Victoria Street, S.W.1.

KENT SOUTH COAST.—Conveyancing and Probate assistant solicitor wanted, preferably young graduate. Partnership after proving period if desired. Old-established and growing medium-sized general practice.—Box 7074, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

OLD-ESTABLISHED Ilford, Essex, firm require experienced conveyancing assistant. Write stating age and previous experience.—Box 7087, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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★ Classified Advertisements ★

continued from p. xxi

APPOINTMENTS VACANT—*continued*

WESTMINSTER solicitors require young and energetic conveyancer, either sex, with wide range of types of work. Salary by arrangement; L.V.'s; three weeks holiday.—Phone ABB 7206.

CONVEYANCING and Probate Clerk (admitted or unadmitted) required by York solicitors. Good prospects in permanent position for applicant able to work with slight supervision and guidance where necessary.—Apply giving full particulars of experience and salary required to Ivor Witcombe, of Puckering Cooper Harland & Witcombe, 1 Finkle Street, York.

NORWICH firm require (*a*) assistant solicitor or unadmitted managing clerk for general practice, with emphasis on conveyancing, probate and company work, and (*b*) assistant solicitor or unadmitted managing clerk mainly for litigation department. Busy and expanding firm. Salary according to ability and experience. Write with full particulars and experience.—Box 7084, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Cashier required to keep sets of books in Ilford and London Branch Offices of Romford Solicitors. Some knowledge of probate and/or conveyancing would be useful.—Write stating age, experience and salary required to Box 7086, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITORS in South London require experienced clerk, aged 25/35, as assistant to litigation Manager; knowledge of Divorce and County Court work, Accident Claims, etc., and able to interview Clients. Good salary paid according to age and experience.—Box 7046, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require Assistant Solicitor or Managing Clerk for Probate and Conveyancing; litigation experience helpful. Generous salary and bonus. Pleasant offices and working conditions. Own room.—Box 7088, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CITY Solicitors require Managing Clerk aged 35–40, with extensive experience in company and commercial work. Excellent salary for right man.—Box 7089, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Managing Clerk required, admitted or unadmitted, by City Solicitors shortly moving to High Holborn. Salary not less than £1,250 and more according to qualifications. Prospects. — Reply to Box 7090, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required by large City firm to work personally with partners on important matters for commercial and private clients. Starting salary up to £2,000 p.a. according to experience and qualifications. Good prospects.—Write with full details about education, articles and experience to Box 7091, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Clerk required by established West End firm. Excellent prospects for keen, self reliant and knowledgeable man or woman seeking advancement. No Saturdays. Salary according to services offered. Write in confidence with details.—Box 6770, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CASHIER/Managing Clerk required by Wiltshire Solicitors. Salary up to £950 per annum according to experience.—Box 7085, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

YOUNG Assistant Solicitor required for commercial, tax, specialised trust and general work in large City Solicitors. Commencing salary around £1,000 p.a.—Please supply full particulars to Box 7092, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOUTH Midland Solicitors require able assistant, admitted or unadmitted. Good salary and prospects of partnership for admitted man.—Box 7093, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANAGING Clerk required for Hornchurch Solicitors. Must have sound knowledge of litigation and some experience of conveyancing. Excellent opportunity for conscientious worker.—Box 7094, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SENIOR LAW CLERK

CHIEF SOLICITOR'S DEPARTMENT
BRITISH TRANSPORT COMMISSION

Knowledge of real property law; experience in conduct of all types of Conveyancing matters, including the preparation of documents.

Commencing salary £875 rising to £1,034 p.a. (upwards review pending).

Apply, stating age, qualifications, experience, present position and salary to Chief Solicitor, Dept. S.J., British Transport Commission, Melbury House, Melbury Terrace, London, N.W.1.

WEST END firm requires assistant in Probate Department. Excellent opportunity for advancement. Salary commensurate with services offered. Write with details.—Box 7018, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LIVERPOOL.—Admitted or unadmitted manager for Common Law department of busy general practice.—Box 7096, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PROGRESSIVE Property Company require services of an experienced solicitor in conveyancing, hard work, long hours, good prospects and salary.—Box 7097, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LONDON.—Insurance Company requires Assistant Solicitor under 35 years for its Legal Department. Good salary and excellent prospects. Work is varied but mainly conveyancing and company matters. Pension Scheme and house purchase facilities.—Box 7098, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CARDIFF.—Young Solicitor interested in litigation and advocacy required by large firm. Suitable for 12 months qualified man with ambition. Commencing salary up to £1,250 per annum according to experience.—Box 7102, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EAST SUFFOLK Solicitors require Clerk (either sex) for accountancy and Income Tax work. Experienced person preferred.—Box 7099, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NORTH MIDDLESEX Solicitors require Conveyancing Managing Clerk capable of dealing with General Conveyancing matters with or without supervision. Salary approximately £1,150–£1,250 according to experience and capabilities.—Write with full particulars.—Box 7100, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CARDIFF.—Unadmitted Clerk required by large Firm with experience of Conveyancing and Probate. Commencing salary up to £1,250 per annum according to experience.—Box 7103, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

APPOINTMENTS WANTED

SOLICITORS Managing Clerk Cashier/Accountant (Female) experienced office management, county court, probate and trusts seeks appointment near Slough or where help in finding accommodation provided.—Box 7104, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR, 25, admitted 1958, completing National Service early November, requires conveyancing post in London area.—Box 7105, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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